(18,598.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 370.

THE COUNTY OF STANISLAUS, IN THE STATE OF CALIFORNIA; THE BOARD OF SUPERVISORS OF SAID COUNTY OF STANISLAUS, GEORGE W. TOOMBS, ET AL., APPELLANTS,

vs.

THE SAN JOAQUIN AND KINGS RIVER CANAL AND IRRIGATION COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

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1 In the United States Circuit Court for the Northern District of California, in the Ninth Circuit.

THE SAN JOAQUIN AND KING'S RIVER CANAL AND IRRIGATION Company, Complainant,
vs.
THE COUNTY OF STANISLAUS, IN THE STATE OF CALIFORNIA, The Board of Supervisors of the said County of Stanislaus, and George W. Toombs, Charles H. Osler, James Alfred Davis, Thomas J. Carmichael, and Joseph P. Barnes, Members of and Constituting said Board of Supervisors, Defendants.

Bill of Complaint.

To the judges of the circuit court of the United States for the northern district of California, in the ninth circuit, sitting in equity:

The San Joaquin and King's River Canal and Irrigation Company, a corporation organized and existing under the laws of the State of California, brings and files this its bill of complaint against The County of Stanislaus in the State of California, The Board of Supervisors of the said County of Stanislaus, George W. Toombs, Charles H. Osler, James Alfred Davis, Thomas J. Carmichael and Joseph P. Barnes, members of and constituting said board of supervisors, and thereupon humbly complaining, your orator, The San Joaquin and King's River Canal and Irrigation Company, shows your honors as follows:

First.

2 Your orator is a corporation organized and existing under the laws of the State of California, and is a citizen and resident of said State; that your orator became a corporation under the laws of the State of California in the month of September, 1871, and ever since has been and now is such corporation; that your orator was incorporated under the act of the legislature of the State of California entitled "An act to provide for the formation of corporations "for certain purposes," approved April 14th, 1853 (Statutes of 1853, page 87), as amended by an act of the legislature of the State of California entitled "An act to authorize the incorporation of canal "companies and the construction of canals," approved May 14th, 1862 (Statutes of 1862, page 540).

That the defendant The County of Stanislaus is one of the political subdivisions of the State of California and within the Federal northern district of California; that the board of supervisors of the said county of Stanislaus is the governing or legislative body of said county; that the defendants George W. Toombs, Charles H. Osler, James Alfred Davis, Thomas J. Carmichael and Joseph P. Barnes were at all of the times herein stated and now are the duly elected, qualified and acting members of said board; that said five individual defendants are, and each of them is, a citizen and resident

of the State of California, and a resident of the county of Stanislaus in said State, which is within the Federal northern district of California.

Second.

That for more than ten years last past your orator has been engaged, and is still engaged, in the business of appropriating
3 water for irrigation, sale, rental and distribution for hire, and does now and for more than ten years last past has maintained a canal through the counties of Fresno, Merced and Stanislaus, in the State of California, in which it carries its waters, so that the same may be sold and distributed to the takers or consumers thereof;

That your orator is now, and for ten years last past has been, the owner of the right to take through the left bank of the San Joaquin river, at the junction of that stream with Fresno slough—which is the overflow outlet of Tulare lake, the whole flow of water in said river, which waters, or as much thereof as is required, your orator has for more than ten years last past, and does now appropriate for sale, rental and distribution to its consumers and customers, to whom said waters so appropriated are delivered by it by means of a canal commencing at the point of appropriation aforesaid and running thence through the county of Fresno, and following along through the county of Merced into and through a large portion of the county of Stanislaus.

Said canal was on the first day of January, 1896, and now is, including those which are lateral and parallel, 120 & ¾ miles in length, and runs 42 & 9/10 miles, counting lateral or parallel, from the point of appropriation to the line dividing the counties of Fresno and Merced, and thence, counting those lateral and parallel, for 66 & 15/100 miles through the county of Merced to the line dividing the counties of Stanislaus and Merced, and thence through the county of Stanislaus for 11 & 7/10 miles.

That your orator did, on the first day of January, 1896, ever since has, and does now own and use in the appropriation and furnishing of such water to its customers and the consumers and users
4 thereof in the three counties aforesaid, canals, ditches, flumes, water chutes and other property, which are actually used in and useful to the appropriation and furnishing of such water (excluding the right to appropriate the same), which property at all of said times was, and still is, of the reasonable worth and value of one million of dollars.

That the right of appropriation above alleged of which your orator is the owner, and which it acquired more than 20 years ago, and has ever since held and owned, is necessary to enable it to supply waters to its customers and the consumers thereof through the three counties aforesaid, and without said right of appropriation and the waters obtained thereunder your orator would be unable to furnish said water to its customers and the consumers thereof, and there is no other supply obtainable wherewith to supply such needs.

Said right of appropriation was at all of the times herein men-

tioned, and now is, of the reasonable worth and of the fair value of five hundred thousand dollars.

Third.

That your orator has a capital stock of 100,000 shares of the par value of one hundred dollars, on each of which ten dollars per share has been paid up, and which stock is held and owned by divers persons.

That on the first day of January, 1896, and at all times thereafter until the adoption of the pretended regulation by the defendants of the rates of the complainant as hereinafter averred, the complainant charged to its customers and the consumers of its water in the counties of Fresno, Merced and Stanislaus the following sums and amounts:

5 For irrigating alfalfa, $2.50 per acre, per annum;
For irrigating cereals, $2.00 per acre, per annum;
For irrigating trees and vines, $2.50 per acre, per annum;
For irrigating gardens, $5.00 per acre, per annum;
For water for sheep, hogs or goats, $10.00 per thousand per month, and at the same rate for a less number;
For water for horses, cattle, mules and other live stock, $40.00 per thousand, per month, and at the same rate per day for a less number;

That the total gross receipts of the complainant for water furnished by it to its consumers and the users of it generally, and from all other sources in the operation, conduct and carrying on of its business, have amounted in the nine years preceding the present year to the following sums and amounts:

In 1887	$51,901.45
In 1888	55,143.05
In 1889	51,352.75
In 1890	20,748.85
In 1891	48,980.40
In 1892	60,881.74
In 1893	62,452.43
In 1894	75,666.80
In 1895	65,479.86

That in the nine years preceding the present year the complainant has laid out, paid out and expended for the maintenance of its plant, and for conducting and carrying on of its business of furnishing water to its customers and the users thereof, the following sums and amounts:

6 In 1887	$18,568.00
In 1888	20,444.78
In 1889	25,099.18
In 1890	23,073.07
In 1891	20,599.73
In 1892	17,963.31
In 1893	19,337.32
In 1894	33,689.95
In 1895	21,631.08

That the average gross receipts of the complainant during said nine years were $54,734.15 per annum, and the average cost of maintenance of the complainant during said period was $22,045.16; that the net returns during said nine years upon the value of the property actually and necessarily used and useful to the appropriation and furnishing of such water by the complainant to its customers and the users thereof generally, together with the right to appropriate said water, amounted to a fraction over two per cent. per annum, and never reached three and a half per cent. per annum, and never amounted to five per cent. per annum upon the value of the canals, ditches flumes, water chutes and all other property actually used and useful to the appropriation and furnishing of such water exclusive of the value of the right of appropriation.

Fourth.

That the operations of your orator in the conduct and carrying on of its business have at all times been characterized by the strictest prudence and economy, and the expenses of the maintenance of its property and the cost of its operation have been the lowest figures at which such maintenance could be secured and such operation carried on; that the salaries paid to its officers and the wages paid to its employés have been no more than were necessary, but at all times have been reasonable and fair rates of compensation, and the services of such employés and officers have been secured as cheaply as practicable; that at all times your orator has secured all supplies, material and property of whatever character for the maintenance of its property and the operation of its business at as low rates as the same can be obtained, and has secured and used no more than was actually necessary for the maintenance of its property and the conduct and operation of its works.

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Fifth.

That the rates charged by your orator as hereinabove alleged as the prices required by it for the sale, rental and distribution of its waters to its customers and to the users thereof generally, were and are fair and reasonable.

Sixth.

On or about the 10th day of March, 1896, there was filed in the office of the board of supervisors of the county of Stanislaus, State of California, at the county-seat of said county, which is Modesto, a petition signed by twenty-five persons, claiming to be inhabitants and tax-payers of said county of Stanislaus, wherein said board of supervisors was petitioned to regulate and control the rates of compensation to be collected by the complainant from the sale, rental and distribution of the waters of the complainant to the inhabitants of the said county of Stanislaus. Said petition was filed in pursuance of an act of the legislature of the State of California, approved March 12th, 1885, which is entitled "An act to "regulate and control the sale, rental and distribution of ap-

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"propriated waters in this State, other than in any city, city and "county or town therein, and to secure the rights of way for the "conveyance of such water to the places of use;" which act appears in the Statutes and Amendments to the Codes of California for the year 1885, on page 95 thereof, and to said act reference is hereby made.

That all of the proceedings herein alleged to have been had and taken by the board of supervisors of the said county of Stanislaus, State of California, and the individual defendants herein, who are members of and constitute said board, were taken and had under the pretended authority and direction of the aforesaid act of the legislature.

On the 24th day of June, 1896, at 10 o'clock a. m. of that day, said petition came on to be heard, and the defendant Board of Supervisors and the individual defendants as members of and composing said board proceeded to and did, in pretended compliance with said act of the legislature aforesaid, fix the following rates to be thereafter charged by the complainant to the users of water in the county of Stanislaus, namely: For irrigating alfalfa, all perennial grasses, and all cereals, $1.50 per acre per annum; for irrigating trees and vines, $2.00 per acre per annum; for irrigating gardens, $3.50 per acre per annum; for water for sheep, hogs, or goats, $6.00 per thousand per month, and at the same rate per month for a less number; for water for horses, cattle, mules and other live stock, $25.00 per thousand per month, and at the same rate per day for a less number.

That in and by its order fixing said rates the said board of supervisors, and the individual defendants as members of and com-
9 posing the same, did estimate and fix as the annual reasonable expenses, including the costs of repairs, management and the operation of its works by the complainant, the sum of $22,000.00 per annum; the annual and reasonable cost whereof was, is, and will for a long time hereafter continue to be that sum or more.

That the rate as fixed by the defendant, The Board of Supervisors in and for the County of Stanislaus, State of California, and by the individual defendants as members of and composing said board, are grossly unfair and unreasonable, and if applied to its whole business will not yield or net to the complainant more than $40,000.00, gross, per annum, or more than 1 & ¾ per cent. upon the value of the canals, ditches, flumes, water chutes and all other property actually used and useful to the appropriation and furnishing of such water, exclusive of the value of the right to the appropriation thereof, and will not yield or net to the complainant 1 & ½ per cent. per annum on the value of the canals, ditches, flumes, water chutes and all other property actually used in and useful to the appropriation and furnishing of such water, together with the value of the right to appropriate such water.

Seventh.

That in fixing said rates as aforesaid the defendant, The Board of Supervisors of the County of Stanislaus, State of California, and the

individual defendants as members of and composing said board did so in wilful and knowing violation of the rights of the complainant, and did fix and estimate the value of its ditches, flumes, water chutes and other property actually used in and useful
10 to the appropriation of the appropriated waters of the complainant, at the sum of $337,000.00.

That in making said estimate the defendants totally excluded and refused to consider as one of the items of its property its right of appropriation, without which it would be impossible to carry on its said business of selling, renting and distributing such appropriated waters, and did make said estimate well knowing that the value of the property of the complainant, other than the value of its right to appropriate said waters, was far in excess of the sum of $750,000.00, and did, without receiving any evidence of the value of said property, and without having any testimony as to what its value was, arbitrarily fix and declare it to be the sum of $337,000.00, when in truth and in fact it was fully and reasonable worth three times that sum, as said individual defendants then and there well knew.

That the defendants aver and claim the fact to be that under the terms of the aforesaid act of the legislature lastly referred to, they were not in duty bound or bound at all to consider in fixing the rates to be charged by the complainant the value of its right to appropriate the waters necessary and required by it to carry on its business of selling, renting and distributing to its customers and the users thereof the appropriated waters acquired by it hereinabove alleged.

Eighth.

And your orator avers that there is no reason to believe that the value of its business will or can be increased by reason of the reduced rates fixed and established by the defendant The
11 Board of Supervisors of the County of Stanislaus, State of California, and the individual defendants the members of and composing said board, but on the contrary your orator avers that there can and will be no compensatory increase or any increase at all from any cause whatever in the business done by the complainant, nor can the expenses of your orator in maintaining its property or operating its business be diminished; and your orator avers, upon information and belief, that if such threatened reduction should be made in its rates by defendants, the same will necessarily result in a depreciation of its net receipts, so that (if said rates be applied to complainant's whole business) the same will not ever amount to or exceed three per cent. per annum upon the value of its property used and necessarily employed in the appropriation, sale, rental and distribution of its waters in the manner hereinbefore alleged.

Ninth.

Your orator further avers that the act of the legislature of the State of California under which it is claimed and pretended that said rates have been fixed and established, and which act of the

legislature is hereinbefore alleged and referred to, is in violation of and repugnant to the provisions of section one of the fourteenth amendment to the Constitution of the United States, in this:

That by the provisions of said act it is declared that the rates authorized to be fixed and established thereunder shall be fixed and established without reference to the value of the right of any person, corporation or association to receive compensation for or a return upon the value of any right by it held or owned to appropriate any waters of this State for sale, rental and distribution to the in-
12 habitants thereof.

Tenth.

Your orator further shows and avers: that unless immediate relief is granted, your orator will be harassed by a multiplicity of actions to enforce and require it to furnish its waters to its customers and all persons desiring to use the same at the rates fixed by the defendants in this cause, which do not afford, and cannot afford, a return greater than two per cent. per annum upon the value of its property, and which are grossly unfair and unreasonable.

Eleventh.

Your orator further avers that in fixing said rates so that the same do not afford nor secure to the complainant a fair, just, reasonable or equitable return upon the value of its property devoted to the said public use, the defendant Board of Supervisors, and the individual defendants as members of and composing said board, have sought to effect, and by the said resolution, if the same be legal and valid, and relief against the same be not afforded by this honorable court, will effect a deprivation by the defendants of the property of your orator without due process of law and will be a denial to it of the equal protection of the law under section one of article fourteen of the amendments to the Constitution of the United States, the protection whereof the complainant does here and now invoke.

Twelfth.

Your orator further shows and avers that this cause is a suit in equity, of a civil nature, and that the matter in dispute ex-
13 ceeds, exclusive of interest and costs, the sum or value of five thousand dollars, and that this cause is a suit arising under the Constitution and laws of the United States, to wit: under section one of article fourteen of the amendments to said Constitution.

In consideration whereof, and forasmuch as your orator is remediless in the premises under the rules of the common law, and can have adequate relief only in a court of equity where matters of this nature are properly cognizable and relievable, your orator prays that by the decree of this court said order of the board of supervisors of said county of Stanislaus in the State of California be decreed to be utterly null and void and of no effect in law;

That it be adjudged and decreed that the complainant is entitled to have the rates for supplying its waters to its customers and to the users thereof generally so fixed that they will in the aggregate af-

ford a reasonable and just compensation for the services rendered, and a fair, just and equitable return therefor;

That an injunction may issue out of this court restraining and enjoining the defendants and each of them from publishing, promulgating, or putting or attempting to put in force said order, and that they be commanded to rescind and set the same aside, and that each and all of the defendants be perpetually enjoined from any attempt to enforce or causing to be enforced said pretended ordinance or order, and from bringing or causing to be brought any action or suit against the complainant, in law or in equity, to enforce any forfeiture, or for any other purpose, for any refusal or failure
14 of your orator to obey said pretended ordinance or order or to conform to the rates thereby prescribed, and from any attempt, directly or indirectly, to compel the complainant to furnish water at other rates than those which may be fixed in the manner and according to the requirements of the law;

And that your orator may have such other and further relief as this cause may require, as well as all costs.

May it please your honors to grant unto your orator a writ or writs of subpœna, to be issued out of and under the seal of this court and directed to the said defendants, The County of Stanislaus in the State of California, the Board of Supervisors of said County of Stanislaus, and George W. Toombs, Charles H. Osler, James Alfred Davis, Thomas J. Carhichael and Joseph P. Barnes, members of and composing said board of supervisors, commanding said defendants and each of them to appear in this court at some day certain to be therein named, and to answer the premises, but not under oath (answer under oath being expressly waived), and to abide by and perform such decree as may be rendered herein.

[Seal of Corporation.]

THE SAN JOAQUIN AND KING'S RIVER CANAL AND IRRIGATION COMPANY,
By HENRY MILLER, *President.*
GARRET W. McENERNEY,
Solicitor for Complainant.

15 STATE OF CALIFORNIA, }
City and County of San Francisco, } *ss:*

Henry Miller, being first duly sworn, says:

That he is the president of The San Joaquin and King's River Canal and Irrigation Company, the complainant above named, and has been such for several years last past; that he has read the foregoing bill of complaint and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated to be upon information or belief, and as to those matters, that he believes it to be true; and, further, that the seal affixed to said bill of complaint is the corporate seal of the com-

plainant, and was affixed by him to said bill, and the name of said complainant signed to said bill by authority of said complainant.

HENRY MILLER.

Subscribed and sworn to before me this 28th day of September, 1896.

H. C. DROGER,

[SEAL.] *Notary Public in and for the City and County of San Francisco, State of California.*

(Endorsed:) Filed September 29, 1896, W. J. Costigan, clerk, by W. B. Beaizley, deputy clerk.

16 *Subpœna ad Respondendum.*

UNITED STATES OF AMERICA:

Circuit Court of the United States, Ninth Judicial Circuit, Northern District of California. In Equity.

The President of the United States of America to the County of Stanislaus, in the State of California; the Board of Supervisors of the said County of Stanislaus, and George W. Toombs, Charles H. Osler, James Alfred Davis, Thomas J. Carmichael, and Joseph P. Barnes, members of and constituting said board of supervisors, Greeting:

You are hereby commanded that you be and appear in said circuit court of the United States aforesaid, at the court-room in San Francisco, on the second day of November, A. D. 1896, to answer a bill of complaint exhibited against you in said court by the San Joaquin and King's River Canal and Irrigation Company, a corporation organized and existing under the laws of the State of California, and to do and receive what the said court shall have considered in that behalf. And this you are not to omit, under the penalty of five thousand dollars.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 29th day of September in the year of our Lord one thousand eight hundred and ninety-six and of our Independence the 121st.

[SEAL.]

W. J. COSTIGAN, *Clerk*,
By W. B. BEAIZLEY,
Deputy Clerk.

17 *Memorandum Pursuant to Rule 12, Rules of Practice for the Courts of Equity of the United States.*

You are hereby required to enter your appearance in the above suit, on or before the first Monday of November next, at the clerk's office of said court, pursuant to said bill; otherwise the said bill will be taken *pro confesso*.

W. J. COSTIGAN, *Clerk*,
By W. B. BEAIZLEY,
Deputy Clerk.

(Endorsed.)

UNITED STATES MARSHAL'S OFFICE,
NORTHERN DISTRICT OF CALIFORNIA.

I hereby certify, that I received the within writ on the 17th day of October 1896, and personally served the same on the 19th day of October, 1896, on the County of Stanislaus, by delivering to and leaving with Geo. W. Toombs, president of the board of supervisors of Stanislaus county an adult person, at the county of Stanislaus in said district, an attested copy thereof.

BARRY BALDWIN,
U. S. Marshal,
By H. M. MOFFITT, *Deputy.*

San Francisco, October 22, 1896.

UNITED STATES MARSHAL'S OFFICE,
NORTHERN DISTRICT OF CALIFORNIA.

I hereby certify, that I received the within writ on the 17th day of October 1896, and personally served the same on the 19th day of October 1896, on Charles H. Osler, by delivering to and leaving with Charles H. Osler, said defendant named therein, at Oakdale, county of Stanislaus in said district, an attested copy thereof, at the dwelling-house or usual place of abode of said one of said defendants herein.

BARRY BALDWIN,
U. S. Marshal,
By H. M. MOFFITT, *Deputy.*

San Francisco, Oct. 22, 1896.

18 UNITED STATES MARSHAL'S OFFICE,
NORTHERN DISTRICT OF CALIFORNIA.

I hereby certify, that I received the within writ on the 17" day of October 1896, and personally served the same on the 19th day of October 1896, on George W. Toombs, by delivering to and leaving with George W. Toombs, said defendant named therein, at Modesto, county of Stanislaus in said district, an attested copy thereof.

BARRY BALDWIN,
U. S. Marshal,
By H. M. MOFFITT, *Deputy.*

San Francisco, October 22" 1896.

UNITED STATES MARSHAL'S OFFICE,
NORTHERN DISTRICT OF CALIFORNIA.

I hereby certify, that I received the within writ on the 17th day of October 1896, and personally served the same on the 20th day of October 1896, on James Alfred Davis by delivering to and leaving with Julia Davis (his wife) an adult person, who is a member or resident in the family of James Alfred Davis, said defendant

named therein, fifteen miles from Waterford, county of Stanislaus, in said district, an attested copy thereof, at the dwelling-house of said defendant.

BARRY BALDWIN,
U. S. Marshal,
By H. M. MOFFITT, *Deputy.*

San Francisco, October 22nd 1896.

UNITED STATES MARSHAL'S OFFICE,
NORTHERN DISTRICT OF CALIFORNIA.

I hereby certify, that I received the within writ on the 17th day of October 1896, and personally served the same on the 20th day of October 1896, on Joseph P. Barnes by delivering to and leav-
19 ing with Mrs. M. E. Barnes, (his wife) an adult person, who is a member or resident in the family of Joseph P. Barnes, said defendant named therein, *at the* twelve miles from Newman county of Stanislaus, in said district, an attested copy thereof, at the dwelling-house of said defendant.

BARRY BALDWIN,
U. S. Marshal,
By H. M. MOFFITT, *Deputy.*

San Francisco, October 22nd, 1896.

UNITED STATES MARSHAL'S OFFICE,
NORTHERN DISTRICT OF CALIFORNIA.

I hereby certify, that I received the within writ on the 17th day of October, 1896, and personally served the same on the 21st day of October, 1896, on Thomas J. Carmichael, by delivering to and leaving with Thomas J. Carmichael, said defendant named therein, at Modesto county of Stanislaus, in said district, an attested copy thereof.

BARRY BALDWIN,
U. S Marshal,
By H. M. MOFFITT, *Deputy.*

San Francisco, October 22nd, 1896.

Filed October 23rd, 1896.

W. J. COSTIGAN, *Clerk,*
By W. B. BEAIZLEY,
Deputy Clerk.

20 In the United States Circuit Court, Northern District of California, in the Ninth Circuit.

THE SAN JOAQUIN AND KINGS RIVER CANAL AND IRRIGATION Company, Complainant,
vs.
THE COUNTY OF STANISLAUS, IN THE STATE OF CALIFORNIA; THE Board of Supervisors of the said County of Stanislaus, and George W. Toombs, Charles H. Osler, James Alfred Davis, Thomas J. Carmichael, and Joseph P. Barnes, Members of and Constituting said Board of Supervisors, Respondents.

Demurrer.

And now come the defendants, by protestation and not confessing or acknowledging all or any of the matters or things in the bill of complaint to be true, in such manner and form as the same are herein set forth, demur to said bill and for cause of demurrer show:

I.

That it appears by complainant's own showing by the said bill, that complainant is not entitled to the relief prayed by the said bill against defendants, or to any relief.

II.

That said bill shows no equity, and does not state facts sufficient to constitute a cause of complaint, or to entitle the said complainant to any relief in equity; and these defendants specify the par-
21 ticular grounds of the cause of demurrer as follows, viz:

(1.) That it appears by the complainant's own showing, that there is an adequate remedy at law for any and all the matters and things set forth in said bill, to wit, the remedy of setting up and litigating any and all of said matters and things, and by way of defense to any proceeding or proceedings which may be brought to enforce the order of the board of supervisors, fixing the rates set forth in said bill, or to enforce any water rate or water rates fixed by said board, or to any proceeding or proceedings which may be brought against said complainant by reason of, or based upon, any matter or thing averred in said bill.

(2.) That it appears by complainant's own showing by the said bill that said defendants have no interest in the subject-matter of the suit, for the following reasons, viz:

(*a.*) Because the only function of the board of supervisors of the county of Stanislaus, in relation to fixing the water rates of said complainant, or in relation to any of the matters and things set forth in the bill, is legislative in character and not subject to review by any court.

(*b.*) Because even if the function of said board, as to said matters and things referred to in the preceding head of this demurrer, were judicial in character, it was exercised and performed after notice

and hearing and would be as conclusive as any other judicial hearing.

(c.) Because the functions of the board have ended and no further act of the board is to be performed in the premises; that the
22 order of the said board fixing said water rates is not to be enforced by said board and that said board is not given any power or charged with any duty to enforce the same, or any part thereof and is not given any power or charged with any duty to take or cause to be taken any proceeding or proceedings for the punishment of any violation or violations thereof; but the said board has become *functus officio* with respect to all of the same, and all of the same is under the law to be enforced and punished, if at all, by other officers of the State of California, who are not now before the court; and in other proceedings before the State courts of the State of California.

(3.) That the showing in the said bill is insufficient because it does not appear therefrom that all or any of the matters and things complained of will result in, or cause any confiscation of the complainant's property or any part thereof, or any destruction of the value of said property or of any part thereof, or in depriving the complainant of any part of its property without due process of law; but that what is sought by the complainant is to have the court substitute its own judgment as to the value of the property of complainant actually used and useful to the appropriation and furnishing of such water, upon which the said water rates were fixed by said board; and as to the rate of interest to be allowed said complainant, and as to the operating expenses of complainant, and as to the reasonableness of the water rates so fixed by said board in the place and stead of the judgment of said board of supervisors, to which said matters are confided by law.

23 (4.) That it appears by complainant's own showing by said bill that the matters and things complained of constitute a valid and proper exercise of the police power of the State, and have a clear tendency to accomplish a legitimate exercise of such power and are not subject to be reviewed by the courts.

(5.) That under the constitution and laws of the State of California permitting the complainant to exercise its franchise, and to appropriate and sell and distribute the waters of the State, the State reserved the right to regulate and control the sale and distribution of said appropriated water, and has under such reserved power prescribed the manner of the sale and distribution of such appropriated waters; and complainant having taken and appropriated the waters of the State under and by virtue of the laws of the State, cannot now be heard to complain that the constitution and laws of said State, providing for such regulation and control, are not binding on complainant.

III.

That it appears by complainant's own showing by the said bill that the subject-matter and controversy therein set forth is ex-

clusively within the jurisdiction of the courts of the State of California.

That said alleged cause of action does not arise under the Constitution, laws, or treaties of the United States; and that said bill of complaint does not present any Federal question or a controversy in respect thereto.

24 Wherefore, and for divers other good causes of demurrer appearing in said bill, the defendants do demur thereto, and humbly demand the judgment of this court whether they shall be compelled to make any further or other answer to the said bill, and pray to be hence dismissed with their costs and charges in this behalf most wrongfully sustained.

C. A. STONESIFER,
L. W. FULKERTH,
Solicitors for Defendants, Modesto, California.

We hereby certify that the foregoing demurrer is in our opinion well founded in point of law.

C. A. STONESIFER,
L. W. FULKERTH,
Solicitors for Defendants.

STATE OF CALIFORNIA, }
City & County of San Francisco, } ss:

Thomas J. Carmichael, being duly sworn, deposes and says, that he is one of The Board of Supervisors of the County of Stanislaus, defendant in the above-entitled proceeding; and that the foregoing demurrer is not interposed for delay.

THOMAS J. CARMICHAEL.

Subscribed and sworn to before me, this 31 day of December, 1896.

[SEAL.] HOLLAND SMITH,
Notary Public in and for the City and County of San Francisco.

(Endorsed:) Service of the within demurrer by copy admitted this 2 day of January 1897. G. W. McEnerney solicitor for compl't. Filed Jan'y 4th 1897, W. J. Costigan, clerk.

25 At a stated term, to wit: the March term A. D. 1898, of the circuit court of the United States of America, of the ninth judicial circuit, in and for the northern district of California, held at the court-room in the city and county of San Francisco, on Wednesday the 25th day of May in the year of our Lord one thousand eight hundred and ninety-eight.

Present: The Honorable William W. Morrow, circuit judge.

SAN JOAQUIN AND KINGS RIVER CANAL AND IRRIGATION Company
vs.
COUNTY OF STANISLAUS ET AL. } No. 12257.

Order Overruling Demurrer.

The demurrer herein having been heretofore heard and submitted to the court for consideration and decision, and having been fully considered, and the opinion of the court having been filed, it is ordered, in accordance with said opinion, that said demurrer be and hereby is overruled and that the defendants be allowed to June rule day within which to answer.

26 In the United States Circuit Court for the Northern District of California, in the Ninth Circuit.

THE SAN JOAQUIN AND KINGS RIVER CANAL AND IRRIGATION Company, Complainant,
vs.
THE COUNTY OF STANISLAUS, IN THE STATE OF CALIFORNIA; The Board of Supervisors of the said County of Stanislaus, and George W. Toombs, Charles H. Osler, James Alfred Davis, Thomas J. Carmichael, and Joseph P. Barnes, Members of and Constituting said Board of Supervisors, Defendants.

Answer.

Come now the defendants in the above-entitled cause, after the overruling of their demurrer to the bill of complaint heretofore filed, and without waiving their said demurrer, or any of the manifold insufficiencies and defects of said bill of complaint, answer the bill of complaint as follows, namely:

I.

These defendants admit, that complainant is a corporation organized and existing under the laws of the State of California, and is a citizen and resident in the said State, and became such corporation in the year 1871, and ever since has been and now is such corporation;

These defendants admit, that the defendant, The County of Stanislaus, is one of the political subdivisions of the State of California, and within the Federal northern district of California; that
27 the board of supervisors of the said county of Stanislaus is the governing or legislative body of said county; that the defendants George W. Toombs, Charles H. Osler, James Alfred Davis, Thomas J. Carmichael and Joseph P. Barnes were at the times mentioned in complainant's bill of complaint, the duly elected, qualified and acting members of said board; and in that behalf, these defendants aver that the above-mentioned defendant Charles H. Osler ceased to be a member of such board of supervisors on the 1st day

clusively within the jurisdiction of the courts of the State of California.

That said alleged cause of action does not arise under the Constitution, laws, or treaties of the United States; and that said bill of complaint does not present any Federal question or a controversy in respect thereto.

24 Wherefore, and for divers other good causes of demurrer appearing in said bill, the defendants do demur thereto, and humbly demand the judgment of this court whether they shall be compelled to make any further or other answer to the said bill, and pray to be hence dismissed with their costs and charges in this behalf most wrongfully sustained.

C. A. STONESIFER,
L. W. FULKERTH,
Solicitors for Defendants, Modesto, California.

We hereby certify that the foregoing demurrer is in our opinion well founded in point of law.

C. A. STONESIFER,
L. W. FULKERTH,
Solicitors for Defendants.

STATE OF CALIFORNIA, }
City & County of San Francisco, } *ss:*

Thomas J. Carmichael, being duly sworn, deposes and says, that he is one of The Board of Supervisors of the County of Stanislaus, defendant in the above-entitled proceeding; and that the foregoing demurrer is not interposed for delay.

THOMAS J. CARMICHAEL.

Subscribed and sworn to before me, this 31 day of December, 1896.

[SEAL.] HOLLAND SMITH,
Notary Public in and for the City and County of San Francisco.

(Endorsed:) Service of the within demurrer by copy admitted this 2 day of January 1897. G. W. McEnerney solicitor for compl't. Filed Jan'y 4th 1897, W. J. Costigan, clerk.

25 At a stated term, to wit: the March term A. D. 1898, of the circuit court of the United States of America, of the ninth judicial circuit, in and for the northern district of California, held at the court-room in the city and county of San Francisco, on Wednesday the 25th day of May in the year of our Lord one thousand eight hundred and ninety-eight.

Present: The Honorable William W. Morrow, circuit judge.

SAN JOAQUIN AND KINGS RIVER CANAL AND IRRIGATION Company
vs.
COUNTY OF STANISLAUS ET AL. } No. 12257.

Order Overruling Demurrer.

The demurrer herein having been heretofore heard and submitted to the court for consideration and decision, and having been fully considered, and the opinion of the court having been filed, it is ordered, in accordance with said opinion, that said demurrer be and hereby is overruled and that the defendants be allowed to June rule day within which to answer.

26 In the United States Circuit Court for the Northern District of California, in the Ninth Circuit.

THE SAN JOAQUIN AND KINGS RIVER CANAL AND IRRIGATION Company, Complainant,
vs.
THE COUNTY OF STANISLAUS, IN THE STATE OF CALIFORNIA; The Board of Supervisors of the said County of Stanislaus, and George W. Toombs, Charles H. Osler, James Alfred Davis, Thomas J. Carmichael, and Joseph P. Barnes, Members of and Constituting said Board of Supervisors, Defendants.

Answer.

Come now the defendants in the above-entitled cause, after the overruling of their demurrer to the bill of complaint heretofore filed, and without waiving their said demurrer, or any of the manifold insufficiencies and defects of said bill of complaint, answer the bill of complaint as follows, namely:

I.

These defendants admit, that complainant is a corporation organized and existing under the laws of the State of California, and is a citizen and resident in the said State, and became such corporation in the year 1871, and ever since has been and now is such corporation;

These defendants admit, that the defendant, The County of Stanislaus, is one of the political subdivisions of the State of California, and within the Federal northern district of California; that
27 the board of supervisors of the said county of Stanislaus is the governing or legislative body of said county; that the defendants George W. Toombs, Charles H. Osler, James Alfred Davis, Thomas J. Carmichael and Joseph P. Barnes were at the times mentioned in complainant's bill of complaint, the duly elected, qualified and acting members of said board; and in that behalf, these defendants aver that the above-mentioned defendant Charles H. Osler ceased to be a member of such board of supervisors on the 1st day

of January 1897, and ever since said time William M. Muncy has been, and now is, the duly elected, qualified and acting member of said board of supervisors in the place of said Charles H. Osler

II.

These defendants admit, that for more than ten years last past complainant has been engaged, and is still engaged, in the business of appropriating water for irrigation, sale, rental and distribution, for hire, and that complainant does now maintain, and for more than ten years last past has maintained, a canal through the counties of Fresno, Merced and Stanislaus, in the State of California, and that it carries such appropriated waters so that the same may be sold and distributed to the takers and consumers thereof;

These defendants admit, that complainant is now, and for more than ten years last past has been, an appropriator, through the left bank of the San Joaquin river, at the junction of that stream with Fresno slough, the overflow outlet of Tulare lake, of some of the waters flowing in said river, which waters so appropriated, complainant has for more than ten years last past, and does now appropriate for sale, rental and distribution, to its consumers and customers, to whom said waters, so appropriated, are delivered by complain-
28 ant by means of a canal commencing at the point of appropriation and running thence through the counties of Fresno and Merced and through a large portion of Stanislaus county;

But these defendants deny, that complainant ever has been the owner of the right to take any of the water of said river at said or any other point of diversion, or ever has appropriated or ever could appropriate the whole flow of water in the said San Joaquin river, or any part thereof, that would decrease the flow of such water to such an extent as to impair the navigation of said river; and in this behalf these defendants aver, that the said San Joaquin river is and at all times mentioned in complainant's bill of complaint was a navigable stream, and a public way, from its mouth to Sycamore point, and that said point of diversion by complainant lies between the mouth of said river and Sycamore point; that no amount of water in said river could ever be appropriated by complainant that would impair its navigability; that the water now taken by complainant, and which has been taken by complainant for more than ten years last past, has impaired the navigation of said river and at times has prevented all navigation therein; that to the extent in which complainant does now, and has heretofore, impaired or impeded the navigation of said river by diverting the waters thereof into its said canal, it cannot exercise any right to appropriate any of the waters in said river or divert the same for any purpose at said point of diversion;

These defendants deny, that on the 1st day of January, or at any other time, said canal was 120¾ miles in length, or any length greater than 97.94 miles; that as to the number of miles the same
29 runs through the counties of Fresno and Merced, these defendants have no information sufficient to enable them to answer, and upon that ground deny, that it runs 42.9 miles through Fresno

county or 66.15 miles through Merced county; but admit, that it runs 11.7 miles through Stanislaus county;

These defendants admit, that complainant on the 1st day of January, 1896, ever since has, and does now, own and use, in the appropriation and furnishing of water to its customers and consumers thereof in the three counties aforesaid, canals, ditches, flumes, water chutes and other property which are actually used in and useful to the appropriation and furnishing of such water, (excluding the right to appropriate the same;) but deny, that said property was at all, or any of said times, or still is, or ever was, of the reasonable worth or value of $1,000,000.00 or of any worth or value in excess of the sum of $251,000.00:

These defendants deny, that complainant is or ever was the owner of any right of appropriation as alleged in the bill of complaint or otherwise, or that the same was acquired more than 20 years ago or at any other time, or that the said alleged right of appropriation is necessary to enable complainant to supply waters to its customers or consumers in said counties, or that without said alleged right of appropriation or the waters obtained thereunder, it would be unable to furnish said water to its customers or consumers thereof, or that there is no other supply obtainable wherewith to supply such needs:

These defendants deny, that said alleged right of appropriation was at all, or any of the times mentioned in said bill of complaint, or now is, or ever was, of the reasonable worth, or of the fair value, of $500,000.00 or of any worth or value whatever.

III.

These defendants admit, that complainant has a capital stock of 100,000 shares, but as to whether the par value is the sum of $100.00 per share, these defendants do not say and cannot answer, but deny that the actual value thereof exceeds $3.00 per share; and in this behalf these defendants aver, that the actual value of said capital stock as they are informed does not now and has not during any of the times stated in said bill of complaint, exceeded the sum of $3.00 per share;

As to the allegations in said bill of complaint, that $10.00 per share has been paid on said stock, and that said stock is owned by divers persons, these defendants have no information or belief sufficient to enable them to answer the same, and upon that ground deny, that $10.00 per share has been paid on said stock;

These defendants admit, that on the 1st day of January, 1896, and at all times thereafter, until the adoption of the resolution by these defendants fixing the rates of charges of complainant, averred in said bill of complaint, the complainant charged to its customers and the consumers of water in said three counties the amounts averred in said bill of complaint;

As to the total gross receipts of complainant in its said business for the years 1887 to 1895, these defendants have no knowledge and cannot say whether they were as averred in said bill of complaint,

further than defendants are informed they appear upon the
31 books of complainant about as averred by complainant; nor have these defendants any knowledge or information, except such as they obtained at the hearing of the application to fix complainant's rates by the testimony of witnesses and the estimate of an engineer expert in such matters, as to the expenses of complainant in the maintenance of its plant or the conduct of its business during said years, and cannot say whether they were as averred in said bill of complaint, nor what were the average gross receipts per annum, nor what was the average cost of maintenance during said years;

These defendants deny, that the net returns during the said 9 years upon the value of the property actually and necessarily used and useful, or actually or necessarily used or useful, to the appropriation or furnishing of such water by complainant to its customers and the users thereof generally, or to its customers or users thereof, together with the right to appropriate said water, amounted to a fraction over 2 per cent. per annum, or never reached 3½ per cent. per annum, or any other per cent. per annum less than 12, or never amounted to 5 per cent. per annum upon the value of the canals, ditches, flumes, water chutes and all other property actually used and useful to the appropriation and furnishing, or to the appropriation or furnishing, of such water, exclusive of the value of the right of appropriation; and in this behalf these defendants aver, that during said period of 9 years, to wit: 1887 to 1895, both inclusive, complainant has received net returns upon the value of all its property actually and necessarily used and useful in the appropriation and furnishing of such water to its customers and the users thereof, together with the right to appropriate said water
32 amounting to more than 9 per cent. per annum on the average, and some years as high as 14 per cent. as these defendants are informed and believe, and with prudent management such net returns would have been at least double what they were.

IV.

These defendants deny, that complainant exercised the strictest prudence or economy in the conduct and carrying on of its business or that it has been prudent or economical at all in the conduct, management or carrying on of its business, or that the expenses of the maintenance of its property or the cost of its operations have been the lowest at which such maintenance could be secured or such operation carried on, or that the salaries or wages paid to its officers or employees have been no more than were necessary, or at all times, or any times, have been reasonable or fair rates of compensation, or that such services have been secured as reasonable or cheaply as possible or that they were reasonable or cheap, or that complainant has secured its supplies, material or property or any of them for the maintenance of its property or the operation of its business or otherwise at as low rates as the same could be obtained or were obtained at low or reasonable rates or has secured or used no more than was actually necessary for the maintenance of its prop-

erty or the conduct or operation of its works or that it has been prudent or economical in any of the above matters;

And in this behalf these defendants aver, that Henry Miller, the president and manager of complainant, is a member of the firm of Miller & Lux and the manager of such firm, which firm is the largest stockholder of complainant, and ever since the incor-
33 poration of complainant has owned, and now owns, about 300,000 acres of land lying below and along the said canal of complainant and susceptible of irrigation from said canal; that said Henry Miller so manages the business of complainant that said firm of Miller & Lux annually irrigates many thousands of acres of their said land from the said canal of complainant free of charge and no account thereof is or ever was made upon the books of complainant, and the same has never entered into the receipts of complainant, and is not entered into the annual receipts averred in complainant's bill of complaint; that said complainant does now and for many years last past has furnished water to said firm of Miller & Lux from said canal for irrigation and other purposes at one-half the rate charged by complainant to its other customers and users thereof; that by reason of the free use of such waters of complainant by said firm of Miller & Lux as aforesaid, and by reason of only charging said firm one-half the rate charged to its other customers for the use of such water as said firm does pay for as hereinbefore averred, the net receipts of complainant are greatly reduced, to the detriment of the other customers and users of such water, in that a high rate has been for many years last past maintained against such other customers and users thereof in order to make up for some of the deficiencies in such receipts caused by the free use of said waters by Miller & Lux as aforesaid, and by the failure to charge said firm for the use of such water as it does pay for the same rate as the other users thereof; that said Henry Miller manages and operates the business of complainant entirely in the interest of said firm of Miller & Lux, and against the interests of the stockholders of
34 complainant and the other users of its waters.

V.

These defendants deny, that the rates charged by complainant as averred in its bill of complaint, or otherwise, as the prices required by it for the sale, rental or distribution of its waters to its customers or to the users thereof generally, or otherwise, or in any manner, were or are fair and reasonable or fair or reasonable at all, or in any respect; on the contrary these defendants aver, that such rates were grossly unfair and unreasonable and that complainant, for many years last past has, and does now, unlawfully and unfairly discriminate between some of its customers and users of its waters in that it charged the firm of Miller & Lux for the use of its water for irrigation and other purposes only one-half of the rate charged to its other customers and users thereof, and that such discrimination in favor of said firm of Miller and Lux tended to greatly reduce the net receipts of complainant and still has that effect.

VI.

These defendants admit, that on the 10th day of March, 1896, a petition in writing was filed in the office of the board of supervisors of the county of Stanislaus at Modesto, signed by not less than 25 inhabitants of said county who were tax-payers therein, wherein said board of supervisors were petitioner to regulate and control the rates and compensation by the complainant for the sale, rental and distribution of the appropriated waters of complainant to the inhabitants of said county, and that said petition was filed pursuant to the
35 act of the legislature of the State of California approved March 12th, 1885, as averred in complainant's bill of complaint, and that all the proceedings of said board of supervisors had and taken to regulate and control the said rates and charges of complainant were had and taken pursuant to said act, and the constitution and laws of the State of California;

These defendants admit, that on the 24th day of June, 1896, at 10 o'clock a. m., said petition came on to be heard, and that thereafter and on the 26th day of June, 1896, said board of supervisors did, in compliance with said act, fix the rates to be thereafter charged by complainant to the users of its appropriated water in said county, and that such rates were as averred in complainant's bill of complaint, and that said board estimated to complainant its reasonable annual expenses, including the cost of repairs, management and operation of its works, at the sum of $22,000.00 per annum;

These defendants deny, that said rates of charges are grossly, or at all, or in any respect, unfair or unreasonable or that if applied to complainant's whole business or any part of it will not yield to it more than $40,000.00 gross per annum or more than 1 4/5 per cent. upon the value of its canals, ditches, flumes, water chutes and all other property actually used and useful to the appropriation and furnishing of such water, exclusive of the right of appropriation thereof, or will not yield or net to complainant 1 1/5 per cent. per annum on the value of such property together with the value of the right of appropriation of such water;

And in this behalf these defendants aver, that such rates will yield and net to complainant more than 9 per cent. upon the
36 value of its canals, ditches, flumes, water chutes and all other property actually used and useful to the appropriation and furnishing of such water including the value of its right of appropriation in such water under prudent and careful management.

VII.

These defendants deny, that said board of supervisors of the county of Stanislaus or the individual defendants as members composing said board, in fixing said rates of complainant, did so in wilful or knowing violation of the rights or of any of the rights of complainant, or that any rights of complainant were thereby violated; but these defendants admit, that said board did fix and estimate the value of complainant's canals, ditches, flumes, water chutes and all other property of complainant actually used and useful to the ap-

propriation and furnishing of such water at the sum of $337,000.00; but deny, that in making said estimate these defendants or any of them totally or at all excluded, or refused to consider, complainant's right of appropriation, as one of its items of property, or that it would be impossible for complainant to carry on its business of selling, renting or distributing such appropriated waters without such right, or that they or any of them made said estimate well knowing that the value of complainant's property, other than the value of its right to appropriate said waters, was far in excess of the sum of $750,000.00, or that such value equaled or exceeded said sum or any other sum in excess of $337,000.00 or did, without receiving any evidence of the value of said property, or without having any testimony as to what its value was, arbitrarily fix and de-
37 clare, or arbitrarily fix or declare it to be the sum of $337,000.00, or acted arbitrarily in any respect in said matter, or without sufficient evidence to support the said valuation of $337,000.00, or that in truth or in fact it was fully, or otherwise or at all, reasonably worth three times that sum, or any other sum in excess of $337,000.00, or that these defendants or any of them ever or at all well knew the same to be of any greater value than that so fixed by them, or that the value of said property of complainant does exceed the sum so fixed by said board of supervisors;

In this behalf these defendants aver, that on the 10th day of March, 1896, a petition, being the same referred to in complainant's bill of complaint, was filed by C. C. Eastin, *et al.*, with the clerk of the board of supervisors of Stanislaus county, signed by more than 25 inhabitants and tax-payers of said county, in due form, and in all respects as required by said act of the legislature of the State of California approved March 12, 1885, (Statutes of 1885, page 95;) that thereby said board was petitioned to regulate and control the rates and compensation to be collected by complainant for the sale, rental and distribution of its appropriated waters, to the inhabitants of said county, in accordance with said act; that pursuant to said petition, the clerk of said board of supervisors caused said petition, together with the notice in all respects as required by said act that the same would be heard on the 15th day of April, 1896, at the hour of 10.30 o'clock a. m., of that day, being a day of the next regular term of the session of said board, at the supervisors' room, at the court-house, in the city of Modesto, in said county of
38 Stanislaus, to be duly published in the Daily Evening News, a newspaper published in said county, from the 10th day of March, 1896, to the 14th day of April, 1896, both inclusive; that on the 15th day of April, 1896, the following order was made and entered by said board of supervisors upon the minutes of said board, to wit:

"In the matter of the petition of C. C. Eastin *et al.* for the regulation "and control of the water rates and compensation of the San "Joaquin and Kings River Canal and Irrigation Company.

"Whereas, it has been made to appear by a petition of not less "than 25 inhabitants who are tax-payers of the county of Stanis-

"laus, State of California, which petition is in writing and on file "herein, that said petitioners have petitioned this board to regulate "and control the rates and compensation to be collected by the San "Joaquin and Kings River Canal and Irrigation Company, a cor- "poration, for the sale, rental and distribution of water appropriated "by said corporation, to a part of the inhabitants of said county of "Stanislaus;

"And it appearing to the board, that said petition and the notice "of the hearing thereof has been duly given and published, in the "manner required by law, and said petitioners appearing, and the "said San Joaquin and Kings River Canal and Irrigation Company "not appearing, it is, therefore,

"Ordered, that the further hearing of said petition be continued "to and until the 13th day of May, 1896, at 10.30 o'clock a. m. of "that day; it is further

"Ordered, that Supervisor Barnes be and he is hereby empow- "ered to employ such experts as he may see fit, to estimate the value
"of the canal and works and property of said company, actu-
39 "ally used and useful to the appropriation and furnishing of
"such water to such inhabitants; it is further

"Ordered, that the clerk of this board cause a copy of said peti- "tion and notice, together with a copy of this order, to be served "personally on the president or secretary of said company, prior to "said 13th day of May, 1896.

"Carried by the following vote: Ayes, Supervisors Davis, Car- "michael, Barnes and Toombs: Supervisor Osler voting no, on the "grounds that it would be too expensive."

Which is a true state- of the matters therein referred to; that on the 11th day of May, 1896, pursuant to the aforesaid order, a true copy of said petition and of said notice *were* personally served on C. Z. Merritt, the secretary of complainant, in the city and county of San Francisco, by the sheriff of said city; that on the 13th day of May, 1896, P. H. Griffin, Esq., an attorney-at-law, appeared before said board of supervisors, on behalf of complainant, in the said matter of fixing its said rates, thereupon, at his request, on the same day, said board made and entered upon its minutes the following order, to wit:

"In the matter of the petition of C. C. Eastin *et al.* to regulate the "water rate of the San Joaquin and Kings River Canal and Irri- "gation Company.

"This matter having been set for hearing at this time, and the "report of surveyors not being on file, and the said surveyors asking "for further time, L. W. Fulkerth, Esq., appearing on behalf of the "county, and P. H. Griffin, Esq., appearing on behalf of the San "Joaquin and Kings River Canal and Irrigation Company, request- "ing that the hearing of the said matter be postponed, it is by the "board

"Ordered, that said matter be continued to and until
40 "Wednesday, June 10, 1896, at 10.30 a. m."

Which contains a true statement of the matters therein referred to; That on the 10th day of June, 1896, Garrett W. McEnerney and P. H. Griffin, Esqs., attorneys-at-law, appeared before said board in behalf of complainant in said matter, and while said board was in regular session, and at their request, the following order was made and entered upon its minutes by said board, to wit:

"In the matter of the petition of C. C. Eastin *et al.* for the regula-
"tion and control of the water rates of the San Joaquin and Kings
"River Canal and Irrigation Company.

"This matter coming on at this time for hearing, upon request of "the San Joaquin and Kings River Canal and Irrigation Company "and by consent of the board, the said matter is continued to and "until Wednesday, June 24th, 1896, at 10.30 a. m."

Which contains a true statement of the matters therein referred to, that on the 24th day of June, 1896, while said board was regularly in session, said Garrett W. McEnnerney and P. H. Griffin, Esqs., appeared before said board on behalf of complainant, and C. A. Stonesifer, Esq., appeared for the petitioners in said matter, and L. W. Fulkerth, Esq., who was the district attorney of said Stanislaus county, appeared for said board of supervisors; that all parties announced themselves ready to proceed with the hearing of said matter, and the hearing thereof was begun on that day, witnesses were sworn and examined and cross-examined by the respective parties, and documentary evidence was introduced, and the proceedings of said day *are* entered upon the minutes of said
41 board were and are as follows:

"In the matter of the petition of C. C. Eastin *et al.* to regulate the
"water rates of the San Joaquin and Kings River Canal and Ir-
"rigation Company.

"This matter coming on regularly upon the petition filed herein: "C. A. Stonesifer, Esq., appearing in behalf of the petitioners, and "L. W. Fulkerth, Esq., appearing in behalf of the board, P. H. "Griffin, Esq., and G. W. McEnerney, Esq., appearing on behalf of "the San Joaquin and Kings River Canal and Irrigation Company, "whereupon, on motion of Supervisor J. P. Barnes, and duly sec-"onded, it is

"Ordered, that N. E. Leek, county reporter, be authorized to take "down in shorthand and transcribe testimony and proceedings given "before the board, and that the compensation allowed said reporter "be fixed at the same as allowed by the superior court of this "county:

"N. E. Leek sworn as reporter:

"R. H. Goodwin called and sworn and certain documentary evi-"dence introduced, whereupon, the board adjourns to and until 1.15 "p. m.

"1.15 P. M.

"On motion of L. W. Fulkerth, Esq., it is by the board
"Ordered, that the clerk of this board issue a subpœna for A. G.
" Patton, to appear forthwith.
"R. H. Goodwin (recalled,) A. Wangenhein, J. B. Crow, C. C.
" Eastin called and sworn as witnesses on behalf of petitioners.
"C. Z. Merritt called on behalf of the San Joaquin and Kings
" River Canal and Irrigation Company, and documentary
42 " evidence introduced, whereupon, the board adjourns to and
" until tomorrow at 9.30 a. m."

That said hearing was proceeded with on the 25th day of June, 1896, witnesses were sworn and examined, and cross-examined, by the respective parties, and documentary evidence introduced, and the proceedings of that day as they were recorded upon the minutes of said board were and are as follows:

"In the matter of the petition of C. C. Eastin *et al.* to regulate the
" water rates of the San Joaquin and Kings River Canal and Irri-
" gation Company.

"This matter having been continued to this time for hearing,
" R. Hunt, sworn and examined as witness, whereupon, the board
" orders an adjournment to and until 1 p. m.
"At 1 p. m., C. Z. Merritt (recalled,) G. Anderson, D. M. Rouse,
" F. P. McCrary, A. Wangenheim (recalled,) Chas. Abbott, D. M.
" Rouse (recalled,) J. Q. Drummond, R. H. Goodwin (recalled,) were
" sworn and examined as witnesses, whereupon the board orders an
" adjournment to and until tomorrow at 9 a. m."

That said hearing was proceeded with on the 26th day of June, 1896, witnesses were sworn and examined, and cross-examined, by the respective parties, and documentary evidence introduced; and after all the evidence was closed, and both sides announced that they had none further to offer, the said matter was fully argued by counsel for complainant and for the petitioners, and after due and careful deliberation by said board of supervisors, they made and entered the following order upon the minutes of said board, together with the proceedings of that day, to wit:

43 "In the matter of the petition of C. C. Eastin *et al.* to
" regulate the water rates of the San Joaquin and Kings
" River Canal and Irrigation Company.

"This matter having been continued to this time for hearing,
" R. H. Goodwin (recalled,) H. P. Sherman, D. M. Rouse (recalled,)
" sworn and examined as witnesses, and the evidence being closed
" after argument by counsel, the matter is submitted to the board
" for consideration and decision, whereupon, the board orders an
" adjournment to and until 1 p. m.
"At 1 p. m., the board adopted the following order in the said
" matter, to wit:

"Order of the board of supervisors of Stanislaus county, fixing and "establishing water rates of the San Joaquin and Kings River "Canal and Irrigation Company.

"Pursuant to an act of the legislature of the State of California, "entitled 'An act to regulate and control the sale, rental and dis- "tribution of appropriated waters in this State, other than in any "city, city and county or town therein, and to secure the rights of "way for the conveyance of such water to the place of use,' ap- "proved March 12th, 1885, the board regularly proceeds to the hear- "ing of the petition of C. C. Eastin, *et al.*, presented herein, praying "for the regulation of the rates and compensation to be collected by "the San Joaquin and Kings River Canal and Irrigation Company, "for the sale, rental and distribution of its appropriated water to any "of the inhabitants of Stanislaus county, under and pursuant "to said act, and evidence having been introduced by and "on behalf of the petitioners herein and by and on behalf "of the said San Joaquin and Kings River Canal and Irriga-
"tion Company, and the same being closed, and the matter
44 "submitted to the board for its consideration and decision,
"and the board being fully advised in the premises, the board "does hereby estimate as near as may be the value of the canal, "ditches, flumes, water chutes and all other property actually used "and useful to the appropriation of the appropriated waters of said "company, belonging to and possessed by it, at the sum of $337,000.00, "and does hereby estimate to said company its annual reasonable "expenses, including the costs of repairs, management and operat- "ing its works, at the sum of $22,000.00.

"And it appearing to the board that said waters are used solely "for irrigation purposes and watering stock, it is, therefore,

"Ordered, that the maximum rates and compensation at which "the said San Joaquin and Kings River Canal and Irrigation Com- "pany may and shall sell, rent or distribute its appropriated waters "to any of the inhabitants of said Stanislaus county be, and the "same are hereby, fixed and established at the following sums, to "wit:

"For irrigating alfalfa, all perennial grasses and all cereals, $1.50 "per acre per annum.

"For irrigating trees and vines, $2.00 per acre per annum.

"For irrigating gardens, $3.50 per acre per annum.

"For water for sheep, hogs or goats, $6.00 per thousand per month, "and at the same rate per month for a less number.

"For water for cattle, horses, mules and all other live stock, "$25.00 per thousand per month, and at the same rate per month "for a less number.

"It is further ordered, that the clerk of this board forth-
45 "with cause this order to be published in full in the Stanis-
"laus County Weekly News, a newspaper published in the "county of Stanislaus, State of California, for not less than thirty "days after the first publication thereof.

"This order shall take effect immediately.

"Each member of the board votes aye on all matters contained "in the foregoing order and in fixing the rates above established, "except as to the fixing of the rate for irrigating alfalfa, perennial "grasses and cereals, upon which matter Supervisors Toombs and "Osler voted no, and requested to have the votes recorded as favor- "ing the establishment of such rates at $1.60 per acre."

That all of the proceedings of said board at said hearing, were duly and correctly taken down in shorthand by N. E. Leek, and as transcribed by him, contain 620 pages, legal cap; that no restrictions of any kind or character were imposed on complainant at said hearing by said board; on the contrary, said board offered the greatest latitude to complainant; that at said hearing Randall Hunt and F. P. McCrary testified as expert engineers on behalf of complainant as to the value of its said property; that C. Z. Merritt, the secretary of complainant, D. M. Rouse, the general superintendent and G. Anderson the superintendent of complainant in Stanislaus county, all testified at said hearing on behalf of complainant, and its books were examined and put in evidence; that at said hearing J. Wangenheim, J. B. Crow, C. C. Eastin, C. S. Abbott, J. Q. Drummond, the former superintendent of complainant, who constructed a portion of its said canal, and H. F. Sherman, all testified on behalf of the petitioners in said matter; that in the latter part of April, 1896, the said board of supervisors
46 employed R. H. Goodwin, an expert civil engineer, and E. D. Grove, the deputy county surveyor of Stanislaus county, to survey and carefully examine all of the canals, ditches, flumes, water chutes and all other property actually used and useful to the appropriation and furnishing of the waters of complainant and submit a report and estimate of the value thereof to said board, together with an estimate of the reasonable annual expenses of complainant, including the cost of repairs, management and operating such works; that said R. H. Goodwin and E. D. Grove, with the necessary corps of assistants, were engaged about two months in surveying and examining the said property of complainant, at a cost of about $1,500.00 to said defendant County of Stanislaus, and did survey and examine said property and estimate and report the value thereof to said board of supervisors, with an estimate of the reasonable annual expenses of complainant, including the cost of repairs, management and operating such works, which said report and estimate was in writing and filed with the clerk of said board on the 10th day of June, 1896, and is as follows, to wit:

"To the honorable the board of supervisors of the county of Stanis- "laus, State of California.

"GENTLEMEN: As per request of supervisor Mr. J. P. Barnes, we "have made a survey of the canal belonging to the San Joaquin and "Kings River Canal and Irrigation Company, and herewith submit "the following report and estimated cost of the canal, ditches, water "chutes and all other property actually used and useful to the ap- "propriation and furnishing of water for such canal.

"The canal is located on the west side of the San Joaquin valley,
"being, lying and situate in the county of Fresno, Merced
47 "and Stanislaus, State of California.
"The length of the main canal is 71.17 miles, 26.77 miles
"of which being double, making a total distance of 97.94 miles of
"constructed canal.
"The width of the canal varies from 25 feet to 40 feet, but the
"majority is of 30 feet base.
"57.97 miles was constructed in the year 1872, 28.87 miles in
"1878, and 4.10 miles in 1884.
"The banks of the canal are in very fair order, but the bed is
"badly silted in many places.
"The upper 30 miles of the canal passes through a thinly settled
"and unimproved country, the balance of 41.17 miles through a
"productive and fast-growing district.
"The following is an estimated cost of construction of the above-
"mentioned canal, taking in consideration the different widths,
"cross-sections, grades, materials and appurtenances based on the
"prices of materials, supplies and labor of the present date.
"Earth excavation 2,966,125 yards at 6½c., $192,798.10.
"Lumber in head, regulating, distributing, waste and inlet gates,
"boxes, bridges, etc., 1,689,410 feet, B. M. in place, $55,536.50.
"Six station buildings, $4,000.00.
"Telephone line, 70 miles, $4,900.00.
"Engineering, superintendence, offices of company, stationery
"and printing, law expenses and other incidentals, $25,723.40.
"Right of way, first 30 miles, 900 acres at $3.00, $2,700.
"Right of way, balance distance, 1,068 acres at $25.00,
48 "$26,700.00.
"Total cost, $312,358.00.
"Cash value:
"We place the present cash value of the above-mentioned canal
"and works at $251,000.00.
"We give the following liberal items of annual expenses for main-
"tenance of the above-mentioned canal:
"Salary secretary, $1,800.00.
"Salary superintendent, $1,800.00.
"Salary 6 sectionmen at $45.00, $3,240.00.
"Office rent, $300.00.
"Stationery and printing, $150.00.
"Rent of 7 telephone boxes, $140.00.
"Batteries, $25.00.
"Feeding 10 horses, $1,080.00.
"Annual *pro rata* on cost of 10 horses, $65.00.
"Annual *pro rata* on cost buggy and carts, $80.00.
"Annual cleaning canal of silt and weeds, $1,500.00.
"Annual repairs on bridges and gates, $320.00.
"Annual repairs on brush dam, $500.00.
"Annual taxes, approx., $2,100.00.
"Annual traveling and incidental expenses, $150.00.

"Total expenses, $13,250.00.
"Modesto, Cal., June 9th, 1896,
"Respectfully submitted,

"R. H. GOODWIN,
"*Consulting Engineer.*
"E. D. GROVE,
"*D'p'ty Co. Surveyor.*

"Endorsed: Report of engineers as to value of San. J. and K. R. "canal, etc. Filed, June 10th, 1896, A. S. Dingley, clerk, by L. H. "Hammett, deputy."

49 That said E. H. Goodwin and E. D. Grove were examined at great length at said hearing, and cross-examined by counsel for complainant; that in the course of said examination and in the fixing of the rates of complainant as aforesaid, said board of supervisors, and the individual members thereof, took into consideration all facts, circumstances, and conditions pertinent thereto, to the end and purpose that said rates should be equal, reasonable and just, both to the complainant and to the inhabitants of said county of Stanislaus, and the subject was fully and thoroughly investigated and inquired into by said board and the members thereof, and the said board did estimate, as near as may be, the value of the canals, ditches, flumes, water chutes and all other property actually used and useful to the appropriation and furnishing of such water of complainant, at said sum of $337,000.00, which is a fair, just and reasonable valuation of the same, and did in like manner estimate as to complainant, its annual reasonable expenses, including the cost of repairs, management and operating such works, at said sum of $22,000.00, which is a fair and liberal estimate of the same; and said board did in fixing such rates, so adjust them that the net annual receipts and profits of complainant are not less than 6 nor more than 18 per cent. upon the value of the canals, ditches, flumes, water chutes and all other property actually used and useful to the appropriation and furnishing of such water of complainant; and that as a result of the aforesaid investigation, the said board passed and adopted the said resolution fixing the rates of complainant as aforesaid, and that said resolution was and is the act of the board,
50 within its jurisdiction, and according to its best judgment and discretion, and is not subject to review by any court.

These defendants deny, that under said act of the legislature of 1885, they were not bound to consider the value of complainant's right to appropriate the waters necessary in its said business of selling, renting or distributing the same to its customers and users thereof.

VIII.

These defendants deny, that there is no reason to believe that the value of complainant's business will or can be increased by reason of the reduced rates or of any rates fixed or established as aforesaid by said board of supervisors of Stanislaus county, or the individual defendants, the members thereof; or that there can or will be no

compensatory increase or no increase at all, from any cause, in the said business of complainant, or that the expenses of complainant in maintaining its property or in operating its said business cannot be deminished; and in this behalf these defendants aver, that by a prudent management by complainant of its said business as hereinbefore averred, and by compelling the said firm of Miller & Lux to pay the same rates for all water it has heretofore used and now uses from complainant's canal, as its other customers and consumers thereof pay, there will be a large increase in the receipts of complainant in its said business; and that there is reason to believe, that by said reduction in its rates there will be an increase in its business and in the number of its customers; that its rates previous to said reduction were so burdensome that many who would and could have used said waters could not afford to pay such former rates;

51 These defendants deny, that the said reduction in its rates, or by any reduction in its rates, or by any threatened reduction thereof by said board, or that said board threatens or has threatened to reduce said rates, the same will necessarily, or at all, result in a depreciation of its net receipts, or that if said reduced rates be applied to its whole business, the same will never amount to or exceed 3 per cent. per annum upon the value of its property used or employed in the appropriation, sale, rental or distribution of its water; and in this behalf these defendants aver, that under said rates as fixed by said board, complainant's net receipts will be at least 9 per cent. per annum upon the present value of all of its canals, ditches, flumes, water chutes and all other property actually used or useful to the appropriation and furnishing of such waters of complainant, and under a prudent management of its business will greatly exceed 9 per cent.

IX.

These defendants deny, that the act of the legislature of the State of California, under which the said board of supervisors claimed the right to and did fix and establish the rates of complainant, is in violation or or repugnant to the provisions of section one of the fourteenth amendment to the Constitution of the United States, or any other section or provision of the Constitution of the United States, or that the rates authorized to be fixed and established, or fixed or established, under said act, shall be fixed or established without reference to the right of complainant, or any other person, corporation or association, to receive compensation for or a

52 return upon the value of any right by it held or owned to appropriate any waters of the State of California for sale, rental or distribution to the inhabitants of such State.

X.

These defendants deny, that complainant will be, or can be, harrassed by a multiplicity of actions of any kind or character to enforce, or require, it to furnish its waters to its customers, or any of them, or to any persons, desiring to use such water at the rates so

fixed by said board of supervisors, unless immediate or any relief is granted it herein; or that such rates, so fixed as aforesaid, do not, or cannot afford return to complainant greater than 2 per cent. per annum, upon the value of its property, or that said rates are grossly, or in any respect, unfair or unreasonable.

XI.

These defendants deny, that said board of supervisors, or the individual defendants as members of and composing said board, or either, or any of them, have sought to effect by said or any resolution fixing the rates of complainant, or that said resolution will in any manner or at all effect, a deprivation, by these defendants, or any of them, of the property of complainant, or any part thereof, without due process of law, or will be a denial to it of the equal protection of the law under section one of article fourteen of the amendments to the Constitution of the United States, or under any other section or article of the Constitution of the United States, or that any action or resolution of this board will have any such effect, or does not afford or secure the complainant a fair, just, reasonable or equitable return upon the value of its property devoted to such public use.

53

XII.

These defendants admit, that this is a suit in equity of a civil nature, and that the matter in dispute, exclusive of interest and costs, exceeds the sum or value of $5,000.00; but these defendants deny, that this cause is a suit arising under the Constitution and laws of the United States, or of section one of article fourteen of the amendments of such Constitution, or any other section or article of such Constitution.

XIII.

And these defendants further aver, that by the order of said board of supervisors, made on the 26th day of June, 1896, fixing and establishing the said rates of complainant, the functions of said board have ended and did terminate at said time upon making said order and no further act of said board is to be performed in the premises; that said order is not to be enforced by said board; and said board is not given any power or charged with any duty under the constitution or laws of the State of California, or of the United States, to enforce the same, or any part thereof, and is not given any power or charged with any duty to take or cause to be taken any proceeding or proceedings for the punishment of any violation or violations thereof; but the said board has become *functus officio* with respect to all of the same, and all of the same is under the law to be enforced and punished, if at all, by other officers of the State of California who, are not now before this court, and in other proceedings before the State courts of the State of California.

And these defendants further aver, that under the Constitution and laws of the State of California, permitting complainant to ex-
54 ercise its franchise, and to appropriate and sell and distribute the waters of the State, the State reserved the right to

regulate and control the sale and distribution of said appropriated water, and all waters of the States, and has under such reserved power prescribed the manner of the sale and distribution of such waters; and complainant having taken and appropriated the waters of the State, under and by virtue of the laws of the State cannot now be heard to complain that the constitution and laws of said State, providing for such regulation and control, are not binding on complainant.

Wherefore, these defendants submit, that they had a right to fix the rates of complainant at the amounts so fixed and established by the order of June 26, 1896, of the board of supervisors of Stanislaus county; that said ordinance is not void or invalid and the same is not reviewable by any court; that the rates of complainant fixed thereby are fair, just and reasonable both to complainant and to the inhabitants of said county of Stanislaus; that complainant is not entitled to an injunction or any relief whatever herein, and that said bill ought to be dismissed, with costs.

THE COUNTY OF STANISLAUS AND
THE BOARD OF SUPERVISORS OF
THE COUNTY OF STANISLAUS,
By G. W. TOOMBS,
Chairman of the Board of Supervisors of the County of Stanislaus, and
A. S. DINGLEY,
Clerk of the Board of Supervisors of the County of Stanislaus.

G. W. TOOMBS.
J. P. BARNES.
55 W. M. MUNSEY.
T. J. CARMICHAEL.
J. A. DAVIS.

L. W. FULKERTH AND
MADDUX & STONESIFER,
Solicitors for Defendants, Modesto, California.

STATE OF CALIFORNIA, } ss:
County of Stanislaus, }

George W. Toombs, James Alfred Davis, Thomas J. Carmichael, Joseph P. Barnes and William M. Muncy, being first duly sworn, depose and say, that they have read the foregoing answer and know the contents thereof, and that the same is true of their own knowledge, except as to the matters which are therein stated on information or belief, and as to those matters that they believe it to be true; and further, that deponent George W. Toombs is, and for many years last past has been, chairman of the board of supervisors of the county of Stanislaus, that the seal attached to said answer is the seal of said county and of said board of supervisors, and was affixed by said George W. Toombs to said answer and the name of said

county and of said board of supervisors signed to said answer by him by authority of said board of supervisors.

G. W. TOOMBS.
J. P. BARNES.
J. A. DAVIS.
W. M. MUNSEY.
T. J. CARMICHAEL.

Subscribed and sworn to before me, this 18th day of July, 1898.

C. S. ABBOTT,

[SEAL.] *Notary Public in and for the County of Stanislaus, State of California.*

(Endorsed:) Filed July 20, 1898, Southard Hoffman, clerk, by W. B. Beaizley, deputy clerk.

56 In the Circuit Court of the United States, Ninth Circuit, in and for the Northern District of California.

THE SAN JOAQUIN AND KING'S RIVER CANAL AND IRRIGATION Company, Complainant,

vs.

THE COUNTY OF STANISLAUS, IN THE STATE OF CALIFORNIA; The Board of Supervisors of the said County of Stanislaus, and George W. Toombs, Charles H. Osler, James Alfred Davis, Thomas J. Carmichael, and Joseph P. Barnes, Members of and Constituting said Board of Supervisors, Defendants.

Replication.

The replication of The San Joaquin and King's River Canal and Irrigation Company, complainant, to the answer of The County of Stanislaus, in the State of California; The Board of Supervisors of the said County of Stanislaus, and George W. Toombs, Charles H. Osler, James Alfred Davis, Thomas J. Carmichael, and Joseph P. Barnes, members of and constituting said board of supervisors, defendants.

This repliant, saving and reserving to itself all, and all manner of advantage of exception, which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer of the said defendants for replication thereunto, saith, that it doth and will aver, maintain, and prove its said bill to be true, certain, and sufficient in the law to be answered unto by the said defend-
57 ants, and that the answer of the said defendants is very uncertain, evasive, and insufficient in law, to be replied unto by this repliant; without that, that any other matter or thing in the said answer contained, material or effectual in the law to be replied to, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all of which matters and things this repliant is ready to aver, maintain, and

prove as this honorable court shall direct, and humbly prays as in and by its said bill it hath already prayed.

GARRET W. McENERNEY,
Solicitor for Complainant.

Dated November 22d 1898.

(Endorsed:) Filed November 22, 1898, Southard Hoffman, clerk, by W. B. Beaizley, deputy clerk.

58 At a stated term, to wit: the March term A. D. 1899 of the circuit court of the United States of America, of the ninth judicial circuit, in and for the northern district of California, held at the court-room in the city and county of San Francisco, on Wednesday the 7th day of June in the year of our Lord one thousand eight hundred and ninety-nine.

Present: The Honorable William W. Morrow, circuit judge.

SAN JOAQUIN AND KINGS RIVER CANAL AND IRRIGATION COMPANY
vs.
COUNTY OF STANISLAUS ET AL. } No. 12257.

Order Allowing Complainant to File Amendment to Bill of Complaint.

On application of complainant's counsel it was ordered that complainant be and hereby is granted leave to file an amendment to its bill herein; and it was stipulated in open court between counsel for both parties hereto, that defendants have the same advantage of any objection to said amendment as if they had demurred thereto; and further that defendants need not answer said amendment, but that the same shall be deemed denied by them.

59 In the United States Circuit Court for the Northern District of California.

THE SAN JOAQUIN & KINGS RIVER CANAL & IRRIGATION COMPANY, Complainant,
vs.
THE COUNTY OF STANISLAUS ET AL., Defendants. } No. 12257.

Amendment to Bill of Complaint.

Now comes the complainant in the above-entitled suit, and, by leave of the court first obtained, amends its bill of complaint herein by adding thereto a paragraph to be numbered thirteenth, and to follow paragraph twelfth thereof, and to read as follows:

Your orator further avers and shows that by section 3 of the aforesaid act of the legislature of the State of California, approved May 14, 1862, it was, among other things, provided as follows: "Every company organized as aforesaid shall have power, and the same is hereby granted, * * * to establish, collect, and receive rates, water rents, or tolls, which shall be subject to regulation by the board of supervisors of the county or counties in which the work is

situated, but which shall not be reduced by the supervisors so low as to yield to the stockholders less than one and one-half per cent. per month upon the capital actually invested."

That this complainant and its stockholders did, prior to the 1st day of March, 1885, actually invest, under the authority of said act, a capital amounting to nine hundred and seventy-one thou-
60 sand one hundred and thirteen dollars and thirteen cents ($971,113.13) in money, all of which was actually, reasonably, and necessarily expended by complainant in the purchase and construction of its canals, ditches, flumes, water chutes, and other property actually used in and useful to the appropriation and furnishing of the water aforesaid; and the property aforesaid was on or prior to the said 1st day of March, 1885, and still is of the reasonable worth and value of nine hundred and seventy-one thousand one hundred and thirteen dollars and thirteen cents ($971,113.13).

That the defendant- aver and claim the fact to be that the hereinbefore-mentioned act of the legislature of the State of California, approved March 12th, 1885, did lawfully repeal the said provisions of the 3rd section of the said act of May 14, 1862; but complainant avers that if the said act of March 12, 1885, be construed as repealing, altering, or amending the said provisions of the said act of May 14, 1862, the said act of March 12, 1885, is in violation of and repugnant to the provisions of section 10 of article 1 of the Constitution of the United States, in this: that the same, if so construed, impairs the obligation of the contract between the State of California and this complainant made and entered into under the authority of said section 3 of said act of May 14, 1862.

[Corporate Seal.]

THE SAN JOAQUIN & KINGS RIVER CANAL & IRRIGATION COMPANY,
By J. LEROY NICKEL, *Vice-President.*
GARRET W. McENERNEY,
Solicitor for Complainant.

61 STATE OF CALIFORNIA, }
City and County of San Francisco, } *ss:*

J. Leroy Nickel, being duly sworn deposes and says: That he is the vice-president of the San Joaquin & Kings River Canal & Irrigation Company, the corporation above named, and has been such for several years last past; that he has read the foregoing amendment to the bill of complaint herein and knows the contents thereof, and that he believes the same to be true; and further, that the seal affixed to said amendment is the corporate seal of said complainant, and was affixed by him thereto and the name of said complainant signed thereto by authority of said complaint.

J. LEROY NICKEL.

Subscribed and sworn to before me this 8th day of June, 1899.

H. C. DROGER,
Notary Public in and for the City and County of San Francisco, State of California.

(Endorsed:) Filed June 8th 1899, Southard Hoffman, clerk, by W. B. Beaizley, deputy clerk.

62 At a stated term, to wit: the November term A. D. 1901 of the circuit court of the United States of America, of the ninth judicial circuit, in and for the northern district of California, held at the court-room in the city and county of San Francisco, on Monday the 6th day of January in the year of our Lord one thousand nine hundred and two.

Present: The Honorable William W. Morrow, circuit judge.

THE SAN JOAQUIN AND KINGS RIVER CANAL AND Irrigation Company
vs.
COUNTY OF STANISLAUS ET AL. } No. 12257.

Order for Final Decree.

This cause, heretofore heard and submitted being now fully considered, and the opinion of the court having been filed it is, in accordance with said opinion ordered that a final decree be filed and entered herein, in favor of complainant, and against the defendants as indicated in said opinion, with costs.

63 In the Circuit Court of the United States, Ninth Circuit, Northern District of California.

THE SAN JOAQUIN AND KING'S RIVER CANAL AND Irrigation Company, a Corporation, Complainant,
vs.
THE COUNTY OF STANISLAUS, IN THE STATE OF California, *et al.*, Respondents. } No. 12257.

Enrollment.

The complainant filed its bill of complaint herein on the 29th day of September 1896, which is hereto annexed.

A subpœna to appear and answer in said cause was thereupon issued, returnable on the second day of November, A. D. 1896, which is hereto annexed.

The respondents appeared herein on the 7th day of December, 1896 by Maddox & Stonesifer and L. W. Fulkerth Esqs., their solicitors.

On the 4th day of January, 1897, a demurrer to the bill was filed herein, which is hereto annexed.

On the 25th day of May, 1898, an order overruling said demurrer was made and entered herein, a copy of which order is hereto annexed.

On the 20th day of July 1898, the answer of the respondents was filed herein and is hereto annexed.

On the 22nd day of November 1898, a replication to said answer was filed herein and is hereto annexed.

On the 7th day of June 1899, an order allowing filing of amendment to the bill, was made and entered herein, a copy of which order is hereto annexed.

64 On the 8th day of June 1899, amendments to the bill of complaint were filed herein, and are hereto annexed.

On the 6th day of January 1902 an order directing entry of decree was made and entered herein, a copy of which order is hereto annexed.

Thereafter a final decree was signed, filed and entered herein, in the words and figures following, to wit:

In the Circuit Court of the United States for the Northern District of California.

THE SAN JOAQUIN AND KINGS RIVER CANAL AND IRRIGATION COMPANY, Complainant,
vs.
THE COUNTY OF STANISLAUS, IN THE STATE OF CALIFORNIA; The Board of Supervisors of the said County of Stanislaus, and George W. Toombs, Charles H. Osler, James Alfred Davis, Thomas J. Carmichael, and Joseph P. Barnes, Members of and Constituting said Board of Supervisors, Defendants. } No. 12257.

Decree.

This cause came on to be heard at this term, and was argued by counsel; and thereupon, upon consideration thereof, it was ordered, adjudged, and decreed as follows, to wit:

1. That that certain order or ordinance passed by the said
65 board of supervisors of the said county of Stanislaus on the 26th day of June, 1896, in the matter of the petition of C. C. Eastin and others to regulate the water rates of the San Joaquin and Kings River Canal and Irrigation Company, and which purported to fix the maximum rates and compensation at which the said San Joaquin and Kings River Canal and Irrigation Company might and should sell, rent, or distribute its appropriated waters to any of the inhabitants of the said county of Stanislaus, deprives the complainant herein of its property without just compensation and without due process of law, and is utterly null and void and of no effect in law;

2. That the said defendants and each of them, and their and each of their successors, agents, servants, and attorneys, and all persons claiming by, through, or under them or either of them, be and each of them is forever enjoined and restrained from publishing, promulgating, or putting or attempting to put in force said order or ordinance, and from enforcing or causing to be enforced, or attempting to enforce or to cause to be enforced, the said order or ordinance or any part thereof, and from bringing or causing to be brought any action or suit against the said complainant, at law or in equity, to enforce any penalty or forfeiture, or to obtain any other remedy for any refusal or failure of said complainant to obey said order or ordi-

nance, or to conform to the rates or any of the rates thereby prescribed, and from attempting, directly or indirectly, to compel said complainant to furnish water at the rates or any rate fixed in said order or ordinance, or at any rates other than those which may be otherwise fixed in the manner required by law;

3. That the complainant have and recover of and from the said defendants its costs of suit herein expended, taxed at

66-70 $1870.30

Dated January 8, 1902.

WM. W. MORROW,
Circuit Judge.

(Endorsed:) Filed and entered January 8, 1902, Southard Hoffman, clerk.

* * * * * * *

71–83 *Certificate to Enrolled Papers.*

Whereupon, said pleadings, subpœna copies of orders, final decree, and a memorandum of taxed costs, are hereto annexed, said final decree being duly signed, filed and enrolled, pursuant to the practice of said circuit court.

Attest, etc.

[SEAL.] SOUTHARD HOFFMAN, *Clerk*,
By W. B. BEAIZLEY, *Deputy Clerk*.

(Endorsed:) Enrolled papers. Filed January 8, 1902, Southard Hoffman, clerk, by W. B. Beaizley, deputy clerk.

* * * * * * *

84 In the United States Circuit Court, Ninth Circuit, Northern District of California.

THE SAN JOAQUIN AND KINGS RIVER CANAL AND IRRIGATION Company, Complainant,
vs.
THE COUNTY OF STANISLAUS, IN THE STATE OF CALIFORNIA; THE Board of Supervisors of the said County of Stanislaus, and George W. Toombs, Charles H. Osler, James Alfred Davis, Thomas J. Carmichael, and Joseph P. Barnes, Members of and Constituting said Board of Supervisors, Defendants.

Opinion.

G. W. McEnnerney and W. B. Treadwell, solicitors for complainant.

C. A. Stonesifer and L. W. Fulkerth, solicitors for defendants.

MORROW, *Circuit Judge:*

This is a suit in equity, brought on September 29, 1896, to enjoin the defendants from enforcing an order of the board of supervisors of Stanislaus county fixing the rates to be charged by the complain-

ant for water distributed by it, and to declare said order null and void.

It is alleged in the bill that the complainant is a corporation organized under the laws of California in September, 1871, in accordance with the provisions of an act of the legislature of the State of California, entitled "An act to provide for the formation of
85 corporations for certain purposes," approved April 14, 1853 (Stats. 1853, p. 87), as amended by the act approved May 14, 1862, entitled "An act to authorize the incorporation of canal companies and the construction of canals" (Stats. 1862, p. 540); that the defendant The County of Stanislaus is one of the political subdivisions of the State of California and within the northern district of California; that the board of supervisors of said county of Stanislaus is the governing or legislative body of said county, and that the defendants George W. Toombs, Charles H. Osler, James Alfred Davis, Thomas J. Carmichael, and Joseph P. Barnes were at all the times stated in the bill the duly elected, qualified and acting members of the said board, and citizens and residents of the northern district of California.

It is alleged that for more than ten years past the complainant has been engaged in the business of appropriating water for irrigation, sale, rental and distribution, for hire, and has for the last ten years maintained, and now maintains, a canal through the counties of Fresno, Merced, and Stanislaus, in the State of California, in which it carries its waters to the takers and consumers thereof; that complainant is now, and for ten years last past has been, the owner of the right to take the whole flow of water of the San Joaquin river through the left bank of said stream at its junction with Fresno slough, and has for the last ten years appropriated said water, for sale, rental, and distribution to its customers by means of a canal running from the point of appropriation through the counties of Fresno and Merced and a large part of the county of Stanislaus, which canal was, on January 1, 1896, and now is, including its lateral and parallel branches, 120¾ miles in length; that of this length of canal 11.7 miles are within the boundaries of the
86 defendant County of Stanislaus. It is alleged that the reasonable value of these canals, ditches, flumes, water chutes, and other property actually used in the appropriation and furnishing of said water, is of the amount of $1,000,000; and that the right of appropriation of said water acquired by the complainant more than twenty years ago, ever since held by it, and necessary to enable it to supply water to its customers in the counties aforesaid, is of the reasonable value of $500,000.

It is further alleged that the complainant has a capital stock of 100,000 shares of the par value of $100 per share, on each of which the sum of $10 has been paid up, and which stock is held by divers persons; that on January 1, 1896, and thereafter until the adoption of the pretended regulation by the defendants, the rates charged by complainant to its customers in the said counties were as follows: For irrigating alfalfa, trees and vines, $2.50 per acre per annum; cereals, $2 per acre; gardens, $5 per acre; for water for sheep, hogs,

or goats, $10 per thousand per month; for horses, cattle, mules and live stock generally, $40 per thousand per month. After setting out the total gross receipts and expenditures of the complainant for the years 1887 to 1895 inclusive, the bill alleges that the average gross receipts of the complainant during the said nine years have been $54,734.15 per annum, and the average cost of the maintenance of the said property $22.045.16 per annum; that the net returns for the said nine years have amounted to a fraction over two per cent. per annum on the value of the property actually and necessarily used in appropriating and furnishing such water by complainant to its customers, have never reached three and one-half per cent. of such value, and have never amounted to five per cent. per annum on the value of the canals, ditches, flumes, water chutes, and all other property actually used in the appropriation and furnish-
87 ing of such water exclusive of the value of the right of appropriation. It is alleged that the operations of the complainant in the conduct of said business have been characterized by the strictest prudence and economy, and that the rates charged to its customers were and are fair and reasonable.

It is further alleged that on March 10, 1896, a petition was filed in the office of the board of supervisors of the county of Stanislaus, signed by twenty-five persons claiming to be inhabitants and taxpayers of said county, asking the said board to regulate and control the rates of compensation to be collected by complainant from the sale, rental and distribution of the water owned by complainant to the inhabitants of Stanislaus county. This petition was filed pursuant to the provisions of an act of the legislature approved March 12, 1885, entitled "An act to regulate and control the sale, rental and distribution of appropriated waters in this State, other than in any city, city and county, or town therein, and to secure the rights of way for the conveyance of such water to the places of use." It is alleged that all of the proceedings taken by the board of supervisors with reference to this petition were under the pretended authority and directions of this act; that on June 24, 1896, said petition came on to be heard by said board, and the individual defendants, as members of said board, proceeded to fix the following rates to be thereafter charged by the complainant for the use of its water in the county of Stanislaus, namely: For irrigating alfalfa, perennial grasses, and cereals, $1.50 per acre per annum; for trees and vines, $2 per acre; for gardens, $3.50 per acre; for water for sheep, hogs, or goats, $6 per thousand per month; and for horses, cattle, mules, and other live stock, $25 per thousand per month; that the said board also estimated and fixed as reasonable annual expenses of re-
88 pairs and management the sum of $22,000. It is averred that the rates so fixed by said board are grossly unfair and unreasonable, and if applied to the complainant's whole business will not realize to complainant more than $40,000 gross per year, or less than one and four-fifth-per cent. upon the value of the canals and other property actually used in the appropriation and furnishing of the water, exclusive of the value of the right of appropriation thereof; and that, including the value of said right of appropriation, will not yield to

complainant more than one and one-fifth per cent. per annum; that in fixing these rates the defendants acted in wilful violation of complainant's rights; that defendants estimated the value of the property used in and useful to the appropriation of said water by complainant at the sum of $337,000, excluding as one of the items of such property the complainant's right of appropriation; that such estimation was arbitrarily made without receiving any evidence of the value of said property, the said defendants well knowing that the value of said property, exclusive of the right of appropriation of said water, was far in excess of the sum of $750,000.

It is averred that there is no reason to believe that the value of complainant's business will or can be increased by reason of the reduced rates so fixed and established, but on the contrary, there will be no compensatory increase whatever; that the expenses of operating its business cannot be diminished, and if said reduction be applied to complainant's whole business, the net receipts will not amount to or exceed three per cent. per annum upon the value of the property used.

It is further alleged that said act under which it is claimed that said rates have been fixed, is in violation of and repugnant to section 1 of the fourteenth amendment to the Constitution of the
89 United States, in that by the provisions of said act it is declared that rates shall be fixed and established without reference to the value of the right of any person, corporation, or association, to receive compensation for or a return upon the value of any right by it held or owned to appropriate any waters of this State for sale, rental, and distribution to the inhabitants thereof.

It is alleged that unless immediate relief is granted, complainant will be harassed by a multiplicity of suits to compel it to furnish water at the rates fixed by the defendants; that the upholding of said rates will amount to a deprivation by the defendants of complainant's property without due process of law, and a denial to complainant of its rights under section 1 of article XIV of the amendments to the Constitution of the United States.

An injunction is prayed for, restraining the defendants from enforcing said order fixing rates, and a decree asked adjudging said order to be null and void, and that complainant is entitled to have its rates for supplying water to its customers so fixed as to return a reasonable and just compensation for services rendered.

This bill was demurred to, on January 2, 1897, for want of jurisdiction and of equity. It was urged that the absence of diversity of citizenship of the parties was fatal to Federal jurisdiction. The demurrer was overruled by this court (90 Fed. 516), on the ground that the averments of the bill presented a Federal question, which is of itself a sufficient source of jurisdiction without the coexistence of diversity of citizenship. The Federal question was determined to be contained in the allegations that the acts of the defendants, if unrestrained, would result in the practical deprivation by defend-
ants of the complainant's property without due process of
90 law, and the denial to complainant of the equal protection of the laws vouchsafed by the fourteenth amendment to the Constitution of the United States.

The answer of the defendants was filed on July 20, 1898. In it the defendants deny that the complainant had ever been the owner of the right to take the whole flow of water of said river at any point of diversion. It is denied that the property of the complainant used in the appropriation and furnishing of water was ever of a higher value than $251,000, that the alleged right of appropriation has ever had any value, or that complainant's capital stock has a value of more than $3 per share. Defendants aver that during said period of nine years complainant has received net returns upon the value of all its property actually and necessarily used and useful in the appropriation and furnishing of water to its customers, together with the right to appropriate said water, amounting to more than nine per cent. per annum on the average, and some years as high as fourteen per cent.; and that with prudent management such net returns would have been doubled. In this behalf it is averred that the receipts of the complainant have been greatly reduced by the fact that the firm of Miller and Lux, of which the president of the complainant corporation is a member, annually irrigate many thousand acres of their land from complainant's canal free of charge, and that water has been furnished to said firm by complainant at one-half the rate charged to other customers.

In regard to the proceedings in connection with the said petition of March 10, 1896, to the board of supervisors of Stanislaus county, the defendants aver that the complainant appeared before the said board by counsel on June 10, 1896; that on June 24, 1896,
91 all parties being ready, the matter proceeded, evidence was introduced, argument made, and after due and careful deliberation, an order was made by the said board fixing the rates as aforesaid. There is also set up in the answer the report of an expert civil engineer and the deputy county surveyor, alleged to have been appointed by the defendants to report upon the estimated cost of the canal, ditches, and all other property used in complainant's business, upon which report it is averred that the said board of supervisors estimated the property of complainant to be worth $337,000, and the reasonable annual expenses of management $22,000. They further aver that the resolution fixing the said rates was and is the act of the said board, according to its best judgment and discretion, within its jurisdiction and not subject to review by any court. It is denied that said rates are unfair or unreasonable, and it is averred that they will yield to complainant more than nine per cent. upon the value of its property used in the carrying on of the said business, including the value of the right of appropriation, under prudent and careful management.

Defendants deny that the act of the legislature under which the said board acted in fixing the said rates is repugnant to section 1 of the fourteenth amendment to the Constitution of the United States, and also deny generally the allegations upon which complainant applies for relief to this court. They aver that the functions of said board ended upon the making of said order on June 26, 1896; that said board has become *functus officio* with respect to the said order and all matters in connection therewith, and the same is to be en-

forced, if at all, by other officers of the State of California, not now before the court, and in other proceedings before the State courts of this State; that under the constitution and laws of California, permitting complainant to exercise its franchise and to appro-
92 priate and sell the waters of the State, the right was reserved by the State to regulate and control the sale and distribution of such appropriated waters; and complainant, having acted under and by virtue of such laws, cannot now be heard to complain that the laws of the State providing for such regulation and control are not binding upon complainant. Wherefore, defendants ask that complainant's bill be dismissed.

On June 8, 1899, an amendment to the bill of complaint was filed by the complainant, adding thereto the allegations that by section 3 of the aforesaid act of May 14, 1862, it was provided that "every company organized a- aforesaid shall have power, and the same is hereby granted, * * * to establish, collect, and receive rates, water rents, or tolls, which shall be subject to regulation by the board of supervisors of the county or counties in which the work is situated, but which shall not be reduced by the supervisors so low as to yield to the stockholders less than one and one-half per cent. per month upon the capital actually invested." It is alleged that prior to March 1, 1885, this complainant and its stockholders actually invested, under the authority of the said act, a capital amounting to $971,113.13 in money, all of which was actually and necessarily expended by the complainant in the purchase and construction of canals and other property used in and useful to the appropriation and furnishing of the water aforesaid, which property was on March 1, 1885, and still is, of the reasonable value of $971,113.13; that though the defendants aver and claim that the said provisions were repealed by the act of March 12, 1885, hereinbefore referred to, complainant avers that such a construction is in violation of and repugnant to the provisions of section 10 of article I of the Constitution of the United States, in this: that it would impair the obliga-
93 tion of the contract between the State of California and this complainant made and entered into under the authority of said section 3 of said act of May 14, 1862.

For the purpose of limiting the question in this case, complainant's counsel at the hearing withdrew the claim for the value of the right of appropriation of the water of the San Joaquin river, in estimating the value of the property used and useful in the appropriation and furnishing of said water.

The first question to be determined is the effect of the incorporation of the complainant under the act of the legislature of April 14, 1853, providing "for the formation of corporations for certain purposes," as amended by the act of May 14, 1862, providing for the "incorporation of canal companies and the construction of canals."

It is contended on behalf of the complainant that as it was organized as a corporation in 1871 under the act of 1853, as amended by the act of 1862, section 3 of the latter act limiting the right of the board of supervisors to reduce rates so as to yield to stockholders not less than one and one-half per cent. per month on the capital

stock actually invested was a contract with the State for the time for which the corporation was organized.

It is contended on the other hand, on behalf of the defendants, that the act of the legislature approved March 12, 1885 (Stats. of Cal. 1885, p. 95), entitled "An act to regulate and control the sale, rental and distribution of appropriated water in this State, other than in any city, city and county, or town therein, and to secure the rights of way for the conveyance of such water to the place of use," *repealed all prior acts in conflict therewith, and in section 5* authorized the board of supervisors of the State to regulate and control the water rates that might be charged by any person, company,
94 association, or corporation, and provided that such rates should be reasonable and just and so limited that the annual receipts and profits thereof should be not less than six nor more than eighteen per cent. upon the value of all the property actually used in and useful to the appropriation and furnishing of such water, as estimated by the said board of supervisors.

It is objected on the part of the complainant that the act of 1885 in no way changes or affects its rights which prior to that time had been acquired and fixed by contract with the State under the act of 1862, and that in so far as the act of 1885 repealed or amended the act of 1862, such repeal or amendment was void as against the complainant's rights, as impairing the obligation of a contract.

The constitution of this State adopted in 1849 provided in article IV, sec. 31, that "corporations may be formed under general laws, but shall not be created by special act except for municipal purpose-. All general laws and special acts passed pursuant to this section *may be altered from time to time, or repealed.*"

Article XII, sec. 1, of the constitution adopted in 187-, provides: "Corporations may be formed under general laws, but shall not be created by special act. *All laws now in force in* this State concerning corporations, and all laws that may be hereafter passed pursuant to this section, *may be altered from time to time, or repealed.*"

This provision of the constitution of the State is, however, qualified by another provision of the same instrument adopted pursuant to a requirement of the Constitution of the United States, providing that no law impairing the obligation of a contract shall ever be passed. (Article I, sec. 16, constitution of California; article
95 I, sec. 10, Constitution of the United States.)

There is also involved in this controversy the prohibition of paragraph 1 of the fourteenth amendment of the Constitution of the United States, providing: "Nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Have the provisions of the act of the legislature of March 12, 1885, impaired the obligations of any contract entered into by the complainant with the State under its incorporation under the act of May 14, 1862? And does the enforcement of the act of March 12, 1885, by the board of supervisors of Stanislaus county in the manner and under the circumstances disclosed by the evidence in this case de-

prive the complainant of property without due process of law, or deny to it the equal protection of the laws?

The act of May 14, 1862, provided that a canal company organized under its provisions should have the power:

1. To make rules and regulations for the management and preservation of its works not inconsistent with the laws of the State, and for the use and distribution of the waters and the navigation of the canals.

2. To establish, collect, and receive rates, water rents, or tolls, which should be subject to regulation by the board of supervisors.

3. Such rates, rents, or tolls should not be so low as to yield less than one and one-half per cent. per month upon the capital actually invested.

The act of March 12, 1885, regulating and controlling the sale, rental and distribution of appropriated water in this State,
96 provides that after proper petition for regulation of water rates, the board of supervisors shall—

1. Estimate the value of all property actually used and useful to the appropriation and furnishing of such water;

2. Estimate the annual reasonable expenses of each person or corporation whose franchise shall be controlled, including repairs, management, and operating of such works;

3. The board may establish different rates for different uses, such as mining, irrigating, domestic, etc., but such rates as to each class shall be equal and uniform.

4. Adjust the net annual receipts and profits so that they may be not less than six nor more than eighteen per cent. upon the value of property actually used and useful;

5. But in such estimation of net receipts and profits, the cost of extensions, enlargements, or other permanent improvements shall not be included as part of expenses, but when completed, shall be included in the present cost and cash value of such work.

6. In fixing said rates within limits aforesaid, said board may take into estimation any and all other facts, circumstances, and conditions pertinent thereto, to the end and purpose that such rates shall be equal, reasonable and just, both to such corporations and to said inhabitants.

The act of 1862 requires the board of supervisors to regulate water rates and tolls of corporations organized under the provisions of the act upon the basis of the "capital actually invested." The act of 1885 requires the board of supervisors to adjust the net annual receipts and profits "upon the value of all the property actually used and useful to the appropriation and furnishing of such water." It will be assumed that this last provision means the cash value of the property at the time the estimate is made by the board of supervisors.
97 As thus construed, these provisions of the two statutes might in some instances produce the same results, but it is clear that with respect to corporations organized under the provisions of the latter act the purpose of the legislature was to furnish a better-defined if not a different basis from that provided in the act of 1862 for estimating the capital or value of the property of the corporation

with respect to which rates were to be fixed. What effect has this statute upon corporations organized, as was the complainant, under the prior act? The act of 1862 is not in terms repealed, but the act of 1895 provides that all water appropriated for irrigation, sale, rental or distribution in the State is a public use and the right to collect rates or compensation for use of such water is a franchise; and, except when furnished to a city, city and county, or town, or the inhabitants thereof, must be regulated and controlled by the several boards of supervisors of the counties in the manner provided by the act. But how regulated and controlled? Must the adjustment of rates for the purpose of determining the net annual receipts and profits which the corporation may retain as income be limited absolutely to the value of the property actually used and useful to the appropriation and furnishing of such water? In other words, assuming as we have that this provision of the statute means the value of the property at the time the rates are fixed by the board, is this present cash value of the property the limit of the power of the board in determining the basis with respect to which rates shall be regulated and controlled? Manifestly not, for the statute provides further that the board in fixing rates may take into estimation any and all other facts, circumstances, and conditions pertinent thereto, to the end and purpose that such values shall be equal, reasonable, and just, both to such corporations and to the inhab-
98 itants. Why, then, is it not within the power of the board in fixing rates to consider the capital actually invested in the property of the corporation, subject only to the limitation that such property is actually used and useful to the appropriation and furnishing of water? It is certainly a most important fact recognized by constitu-ional and statute law in determining whether any given rate is equal, reasonable, and just as between the corporation and the rate-paying public, and there appears to be no answer to the claim of the complainant that it is entitled to such consideration, based not only upon reason and justice, but upon a legal right created by a contract under a prior statute.

To hold that under this statute the capital actually invested in the property of the corporation under the act of 1862 may be entirely disregarded by the board of supervisors in fixing water rates under the act of 1885 would be to encounter the constitutional provision that no law impairing the obligation of a contract should be passed, and this interpretation of the statute would be subject to the further objection that the State cannot deprive the complainant of its property without due process of law or deny to it the equal protection of the laws. These constitutional provisions cannot be held subordinate to the constitutional power conferred upon the State legislature to alter, amend or repeal general laws concerning corporations. As said by the Supreme Court of the United States in Shields *v.* Ohio, 95 U. S. 319, 324, "The power of alteration and amendment is not without limit. The alterations must be reasonable; they must be made in good faith and be consistent with the scope and object of the act of incorporation. Sheer ippression and wrong cannot be inflicted under the guise of amendment or altera-

tion. Beyond the sphere of the reserved powers the vested
99 rights of property of corporations in such cases are surrounded by the same sanctions, and are as inviolable as in other cases."

It will not be necessary to refer to the long line of cases in the highest courts of the nation where these constitutional questions have been elaborately discussed and the rights of property carefully defined in controversies arising out of legislation affecting corporate rights. It will be sufficient for the present purpose to refer to the case of Hill *v.* Glasgow R. Co., 41 Fed. 610, 616, where Judge Jackson of the United States circuit court of Kentucky (afterwards a judge of the Supreme Court of the United States), stated the law of these cases in very clear terms. He said:

"The principle of these and other decisions upon the subject of amending or repealing charters under a reservation of power so to do, is that the legislature may change or modify the privileges and franchises which the State has granted to the corporation, and which concern the interests of the public; but dealing with what it has bestowed, either by way of withdrawal or of alteration, the State may not go further, and so legislate as to disturb, affect, or impair rights either of the corporation or of its shareholders, previously acquired, while the corporate functions were being lawfully exercised. All rights thus acquired, of whatever character, are surrounded and protected by constitutional sanction and guaranties higher and superior to the legislative power of amendment or repeal."

Applying this constitutional principle to the provisions of the act of 1885, it must be held that it was not intended by the legislature to repeal the act of 1862, certainly not with respect to corporations organized under the prior act; and that with respect to such corporations the two acts were to be construed together. What, then, was the duty of the board of supervisors in this case?

Money paid by stockholders to the capital of a corporation is unquestionably property of the corporation. Whether this capital or the property acquired by it has been actually invested and used or made useful in the operation of the franchise of the corpora-
100 tion, is a question of fact to be determined upon proper investigation. It follows, that it was the duty of the board of supervisors to ascertain the amount of capital actually invested in the corporation; that is to say, the amount of capital actually paid in and invested in constructing the canals and acquiring other property used and made useful in supplying water to the customers of the corporation in Stanislaus county, and this fact should have been considered by the board in fixing water rates which the complainant was entitled to charge under the statute.

It appears from the evidence that on March 10, 1896, twenty-five persons, claiming to be inhabitants and tax-payers of the county of Stanislaus, filed a petition with the board of supervisors of that county praying the board to regulate and control the rates and compensation to be collected by the complainant for the sale, rental or distribution of the appropriated water of said company to the in-

habitants of said county. After notice and a hearing upon said petition the board, on June 26, 1896, made the following order:

"Pursuant to an act of the legislature of the State of California entitled 'An act to regulate and control the sale, rental and distribution of appropriated waters in the State other than in any city, city and county, or town therein, and to secure the rights of way for the conveyance of such water to the places of use,' approved March 12, 1885, the board regularly proceeds to the hearing of the petition of C. C. Eastin *et als.*, presented herein, praying for the regulation of the rates and compensation to be collected by the San Joaquin and Kings River Canal and Irrigation Company for the sale, rental or distribution of its appropriated water to any of the inhabitants of Stanislaus county, under and pursuant to said act, and evidence having been introduced by and on behalf of the petitioners herein and by and on behalf of the said San Joaquin and Kings River Canal and Irrigation Company, and the same being closed and the matter submitted to the board for its consideration and decision, and the board being fully advised in the premises, the board does hereby estimate as near as may be the value of the canal, ditches, flumes, water chutes, and all other property actually used and useful to the appropriation of the appropriated waters of said company, belonging to and possessed by it, at the sum of $337,000. * * *"

The remainder of the order is immaterial to the present controversy.

101 This estimate of the value of the complainant's property appears to have been based mainly upon a report by R. H. Goodwin, consulting engineer, and E. D. Grove, deputy county surveyor, experts employed by the board and whose report was made to the board under date of June 10, 1896. This report contained, among other things, the following estimate of cost of construction of complainant's canal:

"The following is an estimated cost of construction of the above-mentioned canal, taking in consideration the different widths, cross-sections, grades, materials and appurtenances based on the prices of materials, supplies, and labor *of the present date.*

Earth excavation, 2,966,125 yards at 6½c	$192,798.10
Lumber in head, regulating, distributing, waste, and inlet gates, boxes, bridges, etc., 1,689,410 feet b. m. in place	55,536.50
Six station buildings	4,000.00
Telephone line, 70 miles	4,900.00
Engineering, superintendence, offices of company, stationery, and printing, law expenses and other incidentials	25,723.40
Right of way, first 30 miles, 900 acres at $3	2,700.00
Right of way, balance distance, 1068 acres at $25	26,700.00
Total cost	$312,358.00

We place the present cash value of the above-mentioned canal and works at $251,000.00."

To this estimated cost of construction at that date, to wit, $312,358.00, the board added the sum of $24,642, making the total of $337,000. It nowhere appears that this addition of $24,642 to the estimated cost of construction at that date as made by the experts employed by the board had any relation to the amount of capital actually invested in the corporation by the shareholders. On the contrary, the testimony indicates that this element in the valuation of the property was entirely ignored.

Upon this valuation of $337,000 the board fixed the following rates: For irrigating alfalfa, all perennial grasses, and all cereals, $1.50 per acre per annum; for irrigating trees and vines, $2
102 per acre per annum; for irrigating gardens, $3.50 per acre per annum; for water for sheep, hogs or goats, $6 per thousand per month, and at the same rate for a less number; for water for horses, cattle, mules and other live stock, $25 per thousand per month, and at the same rate for a less number.

Prior to this order of the board of supervisors the rates which had been fixed by the complainant and charged to consumers of water in the counties of Fresno, Merced, and Stanislaus, were as follows: For irrigating alfalfa, $2.50 per acre per annum; for irrigating cereals, $2 per acre per annum; for irrigating trees and vines, $2.50 per acre per annum; for irrigating gardens, $5 per acre per annum; for water for sheep, hogs, or goats, $10 per thousand per month, and at the same rate for a less number; for water for horses, cattle, mules, and other live stock, $40 per thousand per month, and at the same rate for a less number.

For the purposes of this case it is conceded by the complainant that the rates per acre per annum for irrigating alfalfa, $2.50 per acre per annum, and cereals, $2 per acre per annum, are the only rates that are material to be considered in this case, for the reason that the water supplied to consumers at the other rates constitutes but a very insignificant portion of the business of the complainant.

The damage to the complainant arises out of the fact that but for this order of the board of supervisors of June 26, 1896, fixing the rate that complainant might charge for water supplied to consumers in Stanislaus county for irrigating alfalfa and perennial grasses and cereals $1.50 per acre per annum, complainant would have continued to charge such consumers for irrigating alfalfa $2.50 per acre per annum, and for irrigating cereals $2 per acre per annum. The evidence shows that the rate fixed by the board of supervisors
103 reduces the income of the company considerably below six per cent. upon the capital actually invested in the property of the corporation, and if a corresponding reduction were made in Fresno and Merced counties, its income would, under the most favorable conditions, be reduced to less than five per cent. per annum on the value of the property as estimated by the board of supervisors. Is this valuation of complainant's property correct?

It appears from the evidence that the canal owned and maintained by the complainant is on the west side of the San Joaquin river; that this canal has its head at the junction of the San Joaquin river with Fresno slough in Fresno county, and runs down the west

side of the San Joaquin valley through the counties of Fresno and Merced into the county of Stanislaus. The total length of the canal is 120¾ miles, of which 42.9 miles are in the county of Fresno, 66.15 in the county of Merced, and 11.7 miles in the county of Stanislaus. A branch of the main canal in Fresno and Merced counties, called the Dos Palos branch, is 23 miles in length, but as this branch is not used to supply water in the county of Stanislaus, it may be disregarded in this controversy.

The complainant is a corporation organized in September, 1871, under the laws of the State of California. The capital stock of the corporation is divided into 100,000 shares of the par value of $100. Upon 85,000 shares of this stock calls amounting to $10.50 per share were made, and $862,750 paid in. The remaining 15,000 shares were involved in the transaction of purchase under which they were issued non-assess-ble until calls to the amount of $7.50 per share had been paid upon the other stock. The calls upon this stock amounted to $2.65 per share, and $39,750 paid in. There was also an additional amount of $1.45 per share, on 8,500 shares of
104 this stock paid in, amounting to $12,325; making a total of $914,825 paid by the shareholders upon the stock of the company.

The complainant commenced operations in 1871 by purchasing from another corporation known as the San Joaquin and Kings River Canal Company all the property, vested rights, surveys, and works acquired by that company since the date of its incorporation in 1866. The complainant proceeded with the work of constructing this canal. The date of its completion is a subject of controversy, but need not be determined. The claim of the defendants in this respect may be accepted for the purposes of this case. It appears that in the course of construction the complainant distributed water for irrigating purposes to consumers along the line of the canal, and derived an income from that source up to the year 1886, amounting to $60,349.20. This money was not, however, distributed in dividends, but was used by the company in construction.

From 1886 to 1898 the net profits of the corporation were $158,112.58, and of this amount $134,893.38 was used by the company in the work of construction, making the total amount contributed to the capital of the corporation from 1871 to 1898 the sum of $1,110,067.58. There is, however, to be deducted from this amount the sum of $60,000 realized by the corporation from the sale of a tract of land which it owned. This sum was distributed to the stockholders as a dividend, and must be deducted from the capital stock of the corporation, leaving the net amount of capital the sum of $1,050,067.58.

The books of account and vouchers of the complainant during its entire existence, and the books of account of the former company, were produced as evidence before the examiner. A statement of the cost of construction of the canal and irrigation works up to November 25, 1895, as shown by these books, was prepared by the complainant and introduced in evidence as "Exhibit 2." It is as follows:

105	"Paid San Joaquin & Kings River Canal Company, cost of works to date of purchase.....	$119,335.29
	Paid John Bensley, *et al.* in stock (15000 shares at $7.50) for remainder of property of old company...	112,500.00
	Paid by this company for construction performed by itself from date of purchase from old company to February 28, 1885.....	739,277.84
	Paid by this company for construction from March 1, 1885, to November 25, 1895.....	84,685.51
	Total.....	$1,055,798.64"

This exhibit was subject to the objection that complainant's books prior to 1886 did not distinguish between the cost of maintenance and the cost of construction. The complainant accordingly made a second statement, in which the cost of maintenance was excluded. This revised statement was introduced as "Exhibit 12," and was headed, "Statement of cost of construction of San Joaquin canal to December 31, 1873, and betterments since constructed therein, with cost of construction of parallels and extensions. This included only items actually charged to construction and which can be identified from the accounts as properly belonging thereto, and does not include any charges for construction which cannot be positively so identified from the accounts alone." The items of cost were given in greater detail in this statement than in "Exhibit 2," and amount to $798,429.61. It is evident that this last statement shows the actual cost of complainant's canal and works more accurately than the preceding one, but it is not necessary for the court to determine that it is in fact correct, or that it shows the actual value of the property used and useful in supplying water to the inhabitants of Stanislaus county. It is not the duty of the court to estimate the value of complainant's property or fix the water rates it may charge; but this statement, as well as the one relating to the amount of capi-
106 tal paid into the corporation by the stockholders, can only be considered, with the other testimony in the case on behalf of complainant, as evidence tending to establish the fact that when the board of supervisors estimated the value of the canal, ditches, flumes, water chutes and all other property belonging to the complainant and actually used and useful to the appropriation of water by the company, no consideration was given by the board to the evidence showing the amount of capital actually paid into the corporation or the actual, reasonable and proper cost of the works. The court finds that the evidence in the case does establish the fact that the board failed to perform its duty in this respect. It follows, that the value of complainant's property made by the board of supervisors and the water rates fixed by the board with respect to such estimate, did deprive the complainant of property without due process of law and denied to it the equal protection of the laws.

The question as to the amount of income which the complainant is entitled to receive on account of the capital actually invested, remains to be considered. The act of 1862 provides that the board of

supervisors should not reduce the water rates, rents, or tolls "so low as to yield to the stockholders less than one and one-half per cent. per month upon the capital actually invested." Prior to June 26, 1896, and for a period of more than 25 years, the complainant fixed its own rates for water supplied to consumers, but at no time did it fix rates so high as to yield one and one-half per cent. per month upon any estimate of the value of the property or capital actually invested. This, then, was a right under the statutes which the complainant never claimed and never reduced to possession, either before or after the act of 1885.

In the Sinking Fund cases, 99 U. S. 700, 720, Mr. Chief Justice Waite, speaking of the power of Congress to make such alterations and amendments of the charter as come within the just scope
107 of legislative powers, used language appropriate to this question. He said:

"That this power has a limit, no one can doubt. All agree that it cannot be used to take away property already acquired under the operation of the charter or to deprive corporations of the fruits actually reduced to possession of contracts lawfully made."

This statement was not necessary to the determination of the question before the court, but it appears to be sound in principle. The qualification that a statutory right embraced in the charter of a corporation must be reduced to possession to secure the constitutional protection against alteration and repeal, is unquestionably a law of the grant.

It is perhaps true that there might be cases where a corporation of the character of the complainant, having invested capital in good faith, would not be held to have waived its ultimate right to the limit of income provided in its charter by the acceptance of a smaller income during the progress of construction, or perhaps even longer, until its system of irrigation had brought prospective tracts of land under successful cultivation. But the evidence in this case does not justify the complainant in making that claim. It had waived its right to an income of one and one-half per cent. per month by not making rates to secure that income during any part of its term of existence prior to the passage of the act of 1885, and this act, providing that the net annual receipts as adjusted by the board of supervisors should not be less than six nor more than eighteen per cent. per annum, is therefore properly applicable to the regulation of complainant's rates.

Let a decree be entered in favor of the complainant, in accordance with this opinion.

(Endorsed:) Filed January 6, 1902, Southard Hoffman, clerk, by W. B. Beaizley, deputy clerk.

108 In the Circuit Court of the United States for the Ninth Judicial Circuit in and for the Northern District of California.

Before Hon. E. H. Heacock, examiner in chancery.

THE SAN JOAQUIN AND KINGS RIVER CANAL AND IRRIGATION Co., Complainant,

vs.

THE COUNTY OF STANISLAUS, IN THE STATE OF CALIFORNIA; THE Board of Supervisors of the said County of Stanislaus, and George W. Toombs, Charles H. Osler, James Alfred Davis, Thomas J. Carmichael, and Joseph P. Barnes, Members of and Constituting said Board of Supervisors, Defendants.

Caption to Depositions.

Be it remembered, that on the 12th day of April, A. D., 1899, at 10 a. m., and on the several days thereafter to which the examination was regularly adjourned, as hereinafter set forth, at my office, room 87, in the United States appraiser's building, on the
109 southeast corner of Washington and Jackson streets, in the city and county of San Francisco, of the State of California, before me, E. H. Heacock, examiner in chancery of the circuit court of the United States for the ninth circuit and northern district of California, personally appeared the several witnesses whose names are hereinafter set forth, who were produced and examined on behalf of the respective parties to the above-entitled cause.

W. B. Treadwell, Esq., appeared as counsel on behalf of complainant, and L. W. Fulkerth, Esq. and C. A. Stonesifer, Esq. appeared as counsel on behalf of defendants.

The following is a record of the proceedings:

It is stipulated that the depositions of the several witnesses may be taken down stenographically by B. C. Brown, a skillful stenographer, and by him put into typewriting.

Recess until 2 p. m.

110–113 Examination-in-chief of DAVID M. ROUSE, a witness called on behalf of complainant, sworn.

By Mr. TREADWELL:

Q. 1. What is your full name?
A. David M. Rouse.
Q. 2. What is your age?
A. I am fifty years old.
Q. 3. Where do you reside?
A. Los Banos, Merced county.
Q. 4. Are you in the employ of the San Joaquin and Kings River Canal and Irrigation Company?
A. Yes, sir.

Q. 5. In what capacity?
A. Superintendent.

* * * * * * *

114 Q. 44. This canal in its practical operation and management is divided into sections, is it not?
A. Yes, sir.
Q. 45. How many sections of that canal are in Stanislaus county, in whole or in part?
A. There is one, and I should think a mile of the other one.
Q. 46. What is the name of the portion which is entirely in Stanislaus county?
A. It is the Orestimba section.
Q. 47. Who is in charge of the Orestimba section?
A. Anderson, Gus Anderson.
Q. 48. What is the name of the section of which you say about a mile is in Stanislaus county?
A. That is the Las Garzas section.

* * * * * * *

115 Examination-in-chief of CHARLES Z. MERRITT, a witness called on behalf of complainant, sworn.

By Mr. TREADWELL:

Q. 1. What is your full name?
A. Charles Z. Merritt.
Q. 2. What is your age?
A. 46.
Q. 3. Where do you reside?
A. Oakland, California.
Q. 4. Are you in the employ of the San Joaquin and Kings River Canal and Irrigation Company?
A. I am.
Q. 5. In what capacity?
A. Secretary.
Q. 6. How long have you been employed in that capacity?
A. Nearly sixteen years; to be exact, from the 1st of July 1883.
Q. 7. Who was your immediate predecessor in the office of secretary of that company?
A. Mr. Frank L. Palmer.
Q. 8. Where does Mr. Frank L. Palmer now reside?
A. At North Pomona, Los Angeles county.
Q. 9. Do you know who Mr. Palmer's immediate predecessor was in the office?
A. His name was Holmes.
Q. 10. Do you remember his first name?
A. I think it was George M. I can verify that, though, to make it sure.

Q. 11. We will ascertain that presently. Do you know
116 whether he is living or dead?
A. I don't know.
Q. 12. Have you made any inquiries to ascertain?

A. I have. I have received no reply. I have made inquiries of the prior secretary, and in a letter which he wrote in reply to mine he omitted to answer that point. I wrote again and have not received his reply to the second inquiry.

Q. 13. Do you at present know of any means of discovering his whereabouts?

A. I do not.

Q. 14. Who was Mr. Holmes' immediate predecessor in that office?

A. Mr. Samuel I. C. Swezey.

Q. 14. Is Mr. Samuel I. C. Swezey now living?

A. I am informed that he is not.

Q. 16. You understand that he has been dead for two years?

A. I understand that he has been dead for several years.

Q. 17. Was he the first secretary of this company?

A. He was.

Q. 18. As secretary what are your duties?

A. To keep the books of the company, to record the minutes of the meetings of the trustees and of the stockholders and to perform such other duties as the trustees may direct.

Q. 19. As such secretary, have you kept the books of account?

A. I have.

Q. 20. Do those books show all the business transactions of the company?

A. They do; some of them in a condensed form taken
117 from the books of the superintendent, but all business feeds into the books which I keep.

Q. 21. In what way do you learn of the transactions that have been conducted by the superintendent?

A. The present method is that the superintendent shall take press copies, or rather, his book-keeper shall take press copies of his journal and cash book. These, with the monthly trial balance of their ledger, of the superintendent's ledger and the vouchers for all of their cash transactions are forwarded monthly to me, as well as a pay-roll which, of course, is one of the cash vouchers, and a statement of the drafts which he has drawn.

Q. 22. What you mean is the drafts which he has drawn upon your office?

A. Upon our office during the month. These are all entered into the general books, chiefly through the distribution journal.

Q. 23. Now, how long has it been the practice for the superintendent to report to you in that way?

A. I think the date when we began this system was some time in 1894.

Q. 24. Prior to that what system of reports of the superintendent was in use?

A. Instead of sending a press copy of his journal and cash book, he sent a transcribed copy, and instead of entering that into the general books through the distribution journal, I made copies of his entries, or condensed copies, as the case might be, of his entries, in our journal, and thence posted them into our general ledger.

Q. 25. So then, in one form or another, during the whole period that you have been secretary, the superintendent has sent his
118 monthly reports of all his transactions to your office?

A. He has.

Q. 26. Have you the custody of all of the books, papers and records of the corporation?

A. I have.

Q. 27. As well as those kept before you became secretary?

A. Yes, sir.

Q. 28. Are your books a continuation of those kept prior to the time that you were secretary?

A. They are.

Q. 29. Have you had occasion to examine the books of the company kept prior to the time that you were secretary?

A. To some extent.

Q. 30. You are familiar with the system which prevailed before the time you were secretary?

A. I am.

Q. 31. I will ask you to produce all the books of account and the papers and vouchers relating thereto which are in your custody as secretary.

A. I now produce them, and with them I produce a schedule in which they are enumerated.

Mr. TREADWELL: I offer that schedule in evidence.

Mr. STONESIFER: I will object to that schedule being introduced in evidence. I think each book should come in and be marked by itself as an exhibit, so that we can identify each book and refer to it.

Q. 32. I understand that the witness produces the books which are named in the schedule.

A. I do.

(The schedule is marked "Complainant's Exhibit 1.")

119 Q. 32½. I will ask you whether as such secretary you also have in your custody the books of account of the San Joaquin and Kings River Canal Company?

A. I have.

Q. 33. Or, I should say, any of the books of account.

A. I have in my custody three books, a journal, a cash book and a ledger, which appear to be the books of account of the San Joaquin and Kings River Canal Company.

Q. 34. You will please produce those books.

A. I do now produce them.

Q. 35. The company which I have just mentioned, the San Joaquin and Kings River Canal Company, was the predecessor of this present corporation, plaintiff, was it not?

A. It was.

Q. 36. The present company which is the complainant in *the* this suit bought the property and rights of that company?

A. It did.

Q. 37. And thereafter continued the construction of the works which had been commenced by the old company?

A. Yes.

Q. 38. Do the books of account of the San Joaquin and Kings River Canal and Irrigation Company produced by you show the cost of the construction of the canal and works of that company?

A. They do.

Mr. TREADWELL: We offer in evidence all the books, papers and vouchers which the witness has now produced, that is to say, the books, papers and vouchers of each of those two companies.

Mr. FULKERTH: We object on the ground that no proper foundation has been laid for the introduction of the books, and that
120 there is no proof that the books produced by the witness have been correctly kept, or that they contain a true statement of all the items of expense or the items of construction of the original canal, or that in any respect they are true and correct and properly kept; and on the further ground that they are utterly incompetent and immaterial.

(By Mr. TREADWELL:)

Q. 41. So far as these books have been kept by you, Mr. Merritt, they have, have they not, been correctly kept?

A. They have been correctly kept.

Q. 42. And do correctly show the things which you have mentioned.

A. They do.

Q. 43. So far as your examination has been able to show you of those portions of the books not kept by yourself, do they, or do they not, appear to have been correctly kept?

Mr. FULKERTH: We object to that as hearsay. This witness cannot say whether those books which he has not kept are correctly kept, or not. It is simply an opinion of the witness from an inspection of the books.

A. They appear to have been correctly kept.

(By Mr. TREADWELL:)

Q. 44. What do those books show to have been the cost of construction of the canal and works of the company complainant?

Mr. FULKERTH: Let it be understood that our objection goes to all of the testimony concerning these books and the contents.

Mr. STONESIFER: We also object on the ground that the books are the best evidence, that the books show for themselves. It
121 is simply his opinion upon those books, and that the evidence sought is simply the opinion of this witness as to what is in those books.

Mr. FULKERTH: Also that the question is incompetent, irrelevant and immaterial, and that we are not bound, and that the board of supervisors of Stanislaus county is not bound in fixing the rates of this canal company by the cost of construction of the canal and

works; that that would be an element to be taken into consideration, but that it would not be of controlling effect.

A. Do you wish to fix the date?

(By Mr. TREADWELL:)

Q. 45. Yes, I think I will add to that question, say to and including the 25th day of November, 1895.

A. I have here a written statement showing the cost of construction to that date.

Mr. TREADWELL: We offer that paper in evidence and ask that it be marked "Complainant's Exhibit No. 2."

Mr. FULKERTH: We make the same objection that we made to the introduction of "Complainant's Exhibit No. 1."

(Marked "Complainant's Exhibit No 2.")

(By Mr. TREADWELL:)

Q. 46. How often do you close the books of account of that company and take a balance-sheet?

A. For the last twelve years they have been closed annually.

Q. 47. And on what date each year?

A. On the 25th of November.

Q. 48. Now, I ask you to state what those books and accounts show to have been the cost of maintenance of the canal and works of this company for the three years ending the 25th day of November, 1898.

(Objected to on the ground that it is incompetent, irrelevant and immaterial; that it appears to have been subsequent to the
122 time of fixing the rates by the board of supervisors of Stanislaus county, fixing the cost and maintenance since the order of the board fixing the rate was made; and for that reason it is incompetent, irrelevant and immaterial in this matter.

A. I have here a statement showing the cost of such maintenance year by year for the three years ending November 25, 1898.

Q. 49. Will you please produce it?

(The witness produces.)

Mr. TREADWELL: We offer that in evidence and ask that it be marked "Complainant's Exhibit No. 3.")

Mr. FULKERTH: We make the same objection as was made to the offer of the other two exhibits.

(Marked "Complainant's Exhibit No. 3.")

(By Mr. TREADWELL:)

Q. 50. With regard to one item in this statement Complainant's Exhibit 3, marked "Item of legal expenses," there appears to be a very considerable difference in the three years. Will you state in the first place what kind of expenditures are entered in these books under the head of legal expenses.

A. The cost of litigation in actions that were brought, some against the company and some by the company.

Q. 51. Now, I find from this exhibit that in the year 1898 that the item amounted to $6,576.95, being considerable more than in any previous year. Will you state what litigation involved that expenditure?

A. The largest item was the expense incurred in defending a suit brought by a Mr. Lowery.

Q. 52. William Lowery?

A. William Lowery, for damages.

Q. 53. That was brought against the company?

A. Brought against this company for damages alleged to
123 have resulted from inundation of his land on which were growing crops.

Q. 54. Inundation of his land by reason of the dam of the company?

A. Yes, sir.

Q. 55. What other litigation was pending in this year for which these expenses were incurred?

—. ——.

(By Mr. STONESIFER:)

Q. 56. What are you reading from now, what exhibit?

A. I am reading from the annual balance-sheet of this company for the year ending November 25, 1898.

Mr. STONESIFER: I object to that on the ground that it is not one of the books of the company.

Q. 57. You made that up yourself, did you?

A. This is the annual balance-sheet that was presented at the annual meeting of the company. An action brought by T. A. Crow against this company for damages cost us $53.10 during that year.

(By Mr. TREADWELL:)

Q. 58. You might as well say what that action was for, what was the nature of that action.

A. It was an action for damages for loss of crop resulting from non-delivery of water.

Q. 59. Go on to the next one.

A. The suit which is represented in the ledger under the title of "Injunction suit," cost $9.10.

Q. 60. That is a suit against whom?

A. That is a suit against the supervisors of Stanislaus county.

Q. 61. That is the present case.

A. That is the present case. I have called it an injunction suit, and a suit brought by this county against the Enterprise Land and Canal Company cost us $1016.58.

124 Q. 62. And that suit was for what?

A. To restrain the Enterprise Land and Canal Company from appropriating the water from the San Joaquin river which we claimed—from diverting it, rather.

Q. 63. At the time of bringing that suit that company was ac-

tually diverting, and was threatening to divert the water of the San Joaquin river above your dam, was it?

A. Yes, sir.

Q. 64. And that suit was to restrain that diversion?

A. Yes, sir.

Q. 65. This suit was filed some time in the fall of 1898, was it?

A. I don't remember the date.

Q. 66. Well, what else?

A. Some small items in the way of justice's court costs in Los Banos, amounting to $24.97.

Q. 67. Anything else?

A. That is all.

Q. 68. You have already mentioned the Lowery case, but you have not stated how much.

A. The amount paid for expenses incurred in that matter was $5473.20.

Q. 69. What was that expenditure for in the Lowery case; that is, what was the nature of the expenditures?

A. Besides attorneys' fees, we expended considerable money in making surveys and mapping them, and in witnesses' fees and other expenses there.

Q. 70. When you say surveys and maps, you mean surveys and maps that were used in evidence in the case.

A. In evidence in the trial.

125 Q. 71. Who is the president of the company complainant?

A. Henry Miller.

Q. 72. How long has he been president?

A. I don't remember.

Mr. FULKERTH:

Q. 73. Has that balance-sheet been introduced in evidence?

Mr. TREADWELL: It has been introduced in evidence.

The WITNESS: I have included it in the package which is marked "Annual balance-sheets" and you will find that that is on almost the last page of your schedule there, next to the last page. The box in which it is contained is numbered. It is box No. 4, and you will find that package in there at any time. A copy of the endorsement is in the schedule which you have, referring to the package and where it is to be found.

(By Mr. TREADWELL:)

Q. 74. Who are the present members of the board of directors of the corporation, or the trustees, I believe they are called?

A. E. T. Allen, Mr. D. E. Martin, Mr. Henry Miller, Mr. J. Leroy Nickle, Mr. J. S. Potter, Mr. W. S. Talbot and Mr. D. Henshaw Ward.

Q. 75. Will you take such book as shows the stockholders of the corporation, and I will ask you some questions about that. (The witness produces.) You have now before you the stock ledger and dividend book, I understand you to say?

A. I have.

Q. 76. Now, will you state, referring, if necessary to those books, how much stock in this corporation is held or owned by or on behalf of the corporation Miller & Lux? That is, I include such stock as stands in their name, or in the name of any person for the use of that corporation?

126 A. $54,503.

Q. 77. What is the total number of issued shares?

A. 100,000 shares. I would like to qualify that answer by saying that it is possible that some stock which is held by Mr. Miller, belongs to the corporation of Miller & Lux. That was so at one time. Whether he has transferred it to the corporation, I am not quite sure, but, if so, it is of comparatively small amount.

(By Mr. FULKERTH:)

Q. 78. Do I understand that you are giving all the stock that belongs to the corporation Miller & Lux?

A. Yes, sir; to the corporation.

(By Mr. TREADWELL:)

Q. 79. How many shares of stock does Mr. Miller own?

A. He has 13,941 standing in his name. Whether it all belongs to him, I am not, at this moment, absolutely sure.

Q. 80. So far as that is concerned, you can only speak from the books?

A. That is all I can speak from at present.

Q. 81. Now, which, if any of the directors that you have named, are there not in any way connected with the corporation of Miller & Lux?

A. Mr. Talbot, Mr. Martin and Mr. Ward.

Q. 82. How many shares of stock has Mr. Martin?

A. 750.

Q. 83. How many has Mr. Talbot?

A. 100.

Q. 84. How many has Mr. Ward?

A. 100.

Q. 85. The corporation of Miller & Lux of which I have

127 spoken is the successor of the former firm of Miller & Lux, is it?

A. It is.

Q. 86. And was incorporated when?

A. I am not sure of the date of the incorporation. I know the date of the change of the business. I know the date of the transfer of the business was on the 4th of June, 1897.

Q. 87. That is the property and the business of the firm of Miller & Lux passed to the present corporation on the 4th of June, 1897?

A. It did.

Q. 88. Now, at what time, if the books show, did the firm of Miller & Lux, or Henry Miller and Charles Lux, partners of that firm, obtain the controlling interest in the corporation, complainant?

A. October 11, 1878.

Q. 89. Prior to that time that firm or the members of it, did not have the majority of the shares of stock, did they?

A. They did not.

(By Mr. FULKERTH:)

Q. 90. That is, you are speaking now from the books. You don't know, of course, what stock might have been held in the names of other parties for that firm, or anything of that kind?

(By Mr. TREADWELL:)

Q. 91. I will ask you that. Have you any knowledge outside of what is shown by the books, as to who did hold that stock prior to that time, who really owned the shares of stock mentioned in the books?

A. Not any knowledge, no knowledge except hearsay.

Q. 92. I now show you a paper endorsed "Agreement of the S. J. & K. R. Canal Co. with Miller & Lux," and ask you whether that paper is one of the records of your office.

128 A. It is, but it is not included among the papers, a list of which is there.

Q. 93. That I understand; but this is one of the records of the office.

A. This is one of the records of the office.

Q. 94. Do you know the seal of the corporation which purports to be attached to that agreement?

A. I do not. That is a seal of the corporation that preceded the present one; and I have never seen the seal, as far as I am aware.

Q. 95. Do you know the signatures of Henry Miller and Charles Lux on that agreement?

A. I do.

Q. 96. Do you know the signature of John Bensley, as president, attached to that agreement, signed to that agreement?

A. Only from having seen what purported to be John Bensley's signature in other connections.

Q. 97. You have become acquainted by constant practice with the handwriting of John Bensley, have you not?

A. I have seen it in the records of the company in many places.

Q. 98. And you are familiar with it in that way?

A. That is the signature of John Bensley, judging by that.

Mr. TREADWELL: We offer this paper in evidence and ask that it be marked "Complainant's Exhibit No. 4." It is dated May 18, 1871.

(Objected to as incompetent, irrelevant and immaterial.)

(Marked "Complainant's Exhibit No. 4".)

(By Mr. TREADWELL:)

Q. 99. I now show the witness a paper endorsed, "Contract

129 between Henry Miller and Charles Lux and the San Joaquin & Kings River Canal and Irrigation Co.," dated February 7,

1872. I will ask you whether that is one of the records of your office.

A. It is.

Q. 100. Do you know the signatures?

A. I know the signatures of Henry Miller and Charles Lux; and, as I have before stated, I am familiar with the signature of John Bensley, and I believe this to be his signature. He signs as president of the S. J. & K. R. C. & I. Co. From the records of the company I am very familiar with the signature of Samuel I. C. Swezey, and believe this to be his signature as secretary of the S. J. & K. R. C. & I. Co. I am also familiar with the seal of the company attached.

Q. 101. That is the seal of the company complainant?

A. That is the seal of the company complainant.

Mr. TREADWELL: We offer that in evidence, and ask that it be marked "Complainant's Exhibit No. 5."

(The same objection.)

(Marked "Complainant's Exhibit No. 5.")

Mr. TREADWELL: I will state to the counsel that as to any of these papers, if counsel has any objection other than to the proof of execution, he may make it at any time, at any stage of the examination.

Mr. STONESIFER: It is the understanding that we can make any objection to any of these papers at any time during the trial of the case.

(By Mr. TREADWELL:)

Q. 102. I now show the witness a paper endorsed "Agreement of San Joaquin and Kings River Canal and Irrigation Co., with Henry Miller and Charles Lux, dated November 12, 1879," and ask you whether that is a record of your office.

130

A. It is.

Q. 103. Take the signatures and seal attached to that instrument. Are you familiar with them?

A. It is signed "The San Joaquin and Kings River Canal and Irrigation Company, by Joseph Sedgley, president, F. L. Palmer, secretary; Charles Lux and Henry Miller," and sealed with the corporate seal of the company, complainant.

Mr. TREADWELL: We offer that in evidence and ask that it be marked "Complainant's Exhibit No. 6."

Q. 104. What is the date of that?

A. November 12, 1897.

Q. 105. As shown by the books of complainant now in evidence, how much money has been paid by the stockholders of this corporation to the corporation on its capital stock? That is, I mean, how much on each share.

A. $10.15.

Q. 106. The nominal value, I believe, is $100.00 per share.

A. Yes, sir.

Q. 107. But the actual amount paid is $10.15.

A. That is the aggregate of the assessments that were levied, but there was one block of stock that was sold a little in advance of the amount of assessments levied up to that time. But, broadly speaking, that was the amount that was paid in.

Q. 108. Now, let us understand distinctly. Do you mean that that is precisely the amount that has been paid on each share of the stock?

A. No; I don't think it would figure up just exactly in
131 that way.

Q. 109. State what qualification should be made to that, if any.

A. There was a block of 8500 shares of stock sold to John Bensley by the company at a time when the assessments, so far as I have been able to ascertain by an examination of the books, amounted to $5.15, and the stock was sold at the rate of $6.60, if my recollection is correct, per share.

Q. 110. So on that 8500 shares of stock there was paid, in addition to the $10.15, the difference between the two amounts which you have named?

A. Yes, sir.

Q. 111. Now, is there any other amount of stock of the company that has paid more or less than $10.15?

A. There was a block of 15,000 shares delivered to John Bensley, in pursuance of a resolution adopted by the board as part payment for the property acquired by the present company from its predecessor, the San Joaquin and Kings River Canal & Irrigation Company.

Q. 112. And taken at what price?

A. Taken at the rate of $7.50 a share. That stock was not assessed until the assessments levied upon the other stock had reached the total of $7.50. Thereafter it was assessed the same as any other stock.

Q. 113. So that as to that 15,000 shares, all the assessments up to $7.50 were paid in property received from the old company, and not in money.

A. They were.

Q. 114. Now, are those the only qualifications to your statement?

A. So far as I am aware.

132 Q. 115. Has there been any addition to the capital of the company from any external source other than the amounts paid in on the stock as you have stated?

A. Yes, sir.

Q. 116. From what source?

A. From Miller & Lux.

Q. 117. What amount was paid by Miller & Lux towards the capital of the company, outside of stock?

A. $33,333.33.

Q. 118. What was that paid for?

A. It was paid as the consideration, a part of the consideration

named in the contract between the corporation, plaintiff, and Henry Miller and Charles Lux, as copartners.

Q. 119. The contract which has been introduced in evidence?

A. The contract which has been introduced in evidence.

Q. 120. And you mean the first one, Exhibit 4, or all the contracts.

A. My impression is that it was Exhibit 5, although it may have been—I have never read Exhibit 4, so I am not sure whether it figured in that or not.

Q. 121. This Exhibit 5 is the one you are referring to.

A. That is the one I am referring to.

Q. 122. Are there any other additions to the capital stock than those you have mentioned?

A. Well, yes.

Q. 123. I said from external sources.

A. From external sources; that is right.

Q. 124. Now, has any addition been made to the capital of the company by reason of its internal management?

A. Yes, profits derived from the business of the company
133 during the earlier years of its history were all turned into the construction work, and they became a part of the capital.

Q. 125. Up to what time did that state of things continue as shown by the books?

A. The books were closed on November 25, 1886, carrying to capital account an amount which showed, according to the advice of an expert employed for the purpose, the amount which had been contributed by the company by way of earnings, to the capital of the company.

Q. 126. Now, referring to that balance-sheet state what that amount was.

A. It is not in this balance-sheet.

Q. 127. Well, then, get the balance-sheet that does show it.

A. I will have to testify from the ledger.

Q. 128. Well, take it from the ledger.

A. This is from Ledger B.

Q. 129. State the page that you read from, or that you use.

A. On page 1, under the head of "Capital account"——

(By Mr. FULKERTH:)

Q. 130. (Interrupting.) What exhibit are you reading from?

A. It is marked "Ledger B," and it is so down in the schedule which you have. Your schedule shows this ledger. It describes this ledger. On page 1, under the head of "Capital account," I find the item "November 26, 1886, by profit and loss," referring to page 217 of the journal, "60,349.20;" that is the item to which I refer as showing the amount which was contributed from the earnings, to the capital of the company.

(By Mr. TREADWELL:)

Q. 131. By that I understand you mean that that much of the

profits of the company were not withdrawn but were used in
134 the business of the company, and therefore became an increment to its capital.

A. Exactly.

Q. 132. When was the first dividend declared by this company on its capital stock?

A. On November 1, 1881.

Q. 133. What was the amount of that dividend, the total amount of it?

A. $50,000, which would be fifty cents per share upon every share of the capital stock.

Q. 134. Now, at the time that that dividend was declared, how much money was there applicable to the payment of dividends? How much money appeared on the books as in the possession of the company as profits which was not included in that dividend? That is, how much undivided profits were left on that date?

A. I can't tell you that. The books at the time that dividends were declared were not kept so as to show profit and loss. They did not make balance-sheets. They made statements of receipts and disbursements annually, but they did not show the profits and losses annually. That was not done until later, beginning November 25, 1887.

Q. 135. Now, some explanation had better be given there. In practical book-keeping, in order to determine the profits of an individual or a corporation, it is necessary to take an inventory of all the property on hand, is it not?

A. Yes sir.

Q. 136. And when was that first inventory taken?

A. On November 15, 1887, which was the basis upon which
135 the books were closed on November 25, 1887, and upon which the balance-sheet on that day was made.

Q. 137. Prior to that time, you cannot testify how much profits were due any particular day?

A. I cannot.

Q. 138. And can only testify what the profits were in gross?

A. That is all.

Q. 139. When was the canal of this company, the main canal completed to Los Banos creek?

A. I have not data at hand at this moment from which I can tell you.

Q. 140. What engineer, if any, has the company in its employ at present, either permanently, or occasionally?

A. Mr. F. P. McCray and Mr. Wanzer. Mr. E. C. Morgan, who is the superintendent's book-keeper, is also a civil engineer, and occasionally does a little engineer work.

Q. 141. For about how long have Mr. Wanzer and Mr. McCray been doing work for the company respectively?

A. Mr. McCray has been connected with the company at various times for many years; longer probably than I have been connected with the company myself. Mr. Wanzer has done occasional work

for the company for probably six years. I am not positive how long without looking over the records.

Q. 142. Who was the engineer, if you know, from the books on the original construction of the canal?

A. Mr. Brereton was chief engineer, I believe.

Q. 143. Was he not consulting engineer?

A. Consulting engineer; I think that was his office.

Q. 144. R. M. Brereton?

A. I think he was consulting engineer.

136 Q. 145. And who was the other one?

A. Mr. Stangroom was, I believe, a chief engineer.

Q. 146. Who had charge of the engineer work, if you know, on extension A?

A. I am not certain; I think it may have been Mr. Stangroom, but I am not sure.

Q. 147. And who had charge of the engineer work on extension B?

A. I don't know that I ever examined into that, but probably it was Mr. Barrett.

Q. 148. What are his initials?

A. Charles H. He was an engineer who was frequently employed by the company about that time. He has not been employed for several years last past.

Q. 149. Do you know where Mr. Brereton is now?

A. I do not.

Q. 150. Have you heard of him for a long time?

A. I have no information of his whereabouts since he was in this city some five or six years ago on a visit.

Q. 151. Did he at that time state where he was then going or intending to go?

A. Not to my knowledge.

Q. 152. You don't know then.

A. No, sir.

Q. 153. I will ask you to give a statement of all the dividends that have ever been declared and paid by the company complainant, giving the dates and the amounts per share, and if any of those dividends were declared out of anything but profits, you can so state when you give them.

A. Dividend No. 1 was declared November 1, 1881, for fifty cents per share.

137 Mr. FULKERTH: $50,000?

A. $50,000. I will state consecutively, giving the number, the amount and the date. No. 2, 40 cents per share, November 13, 1882.

Q. 154. What was the amount? Give us the amount.

A. The amount was $40,000. No. 3, 25 cents; declared December 3, 1883.

(By Mr. TREADWELL:)

Q. 155. $25,000?

A. Yes, sir. No. 4, 15 cents; declared December 1, 1895.

(By Mr. FULKERTH:)

Q. 156. None between 1883 and 1885?

A. No. No. 5, 60 cents; declared April 16, 1887. This was a dividend in distribution of funds derived from the sale of land, and was not a dividend of profits.

(By Mr. TREADWELL:)

Q. 157. No profits on sale of water, or otherwise, entered into that dividend at all?

A. None whatever, except as there might have been a profit in the increase of the value of land since it was bought. No. 6, 20 cents; declared December 6, 1887.

Q. 158. Did I understand you to say that No. 4 was 1885 or 1895?

A. 1885. No. 4 is December 1, 1885. Dividend No. 7, 20 cents, declared December 4, 1888. No. 8, 10 cents, declared June 26, 1890. No. 9, 10 cents, declared December 2, 1890. No. 10 25 cents, declared December 1, 1891. No. 11 25 cents, declared December 7, 1892. No. 12, 40 cents, declared December 4, 1893. No. 13, 40 cents, declared December 4, 1894. No. 14, 40 cents, declared December 5, 1895. No. 15, 20 cents, declared November 30, 1896. No. 16, 10 cents, declared December 7, 1898.

138 (By Mr. STONESIFER:)

Q. 159. None in 1897?

A. No sir.

(By Mr. TREADWELL:)

Q. 160. Now, at the close of the fiscal year for which the last dividend of which you have spoken was declared, how much undivided profits remained; that is, on the 25th day of November, 1898.

Mr. STONESIFER: This matter all goes in subject to our objection.

Mr. TREADWELL: It is understood that when you wish to make either a special objection which applies to the ordinary course of testimony, or that you wish to step in with an objection at any time, except an objection to the due execution of an instrument, that such an objection may be made at any time. But you must make the statement of the objection and the substance. You may put it in at any time you like before the testimony is closed. Any time before the testimony is closed you may make any objection you please to the testimony.

Q. 161. (Question 160 read to the witness.)

A. Do you mean undivided profits?

Mr. TREADWELL: The total undivided profits as shown by the books exclusive of the $60,000 which have been carried to the capital account.

A. In that way the profits on November 25, 1898 aggregate $158,112.58.

Q. 162. And this last dividend came out of that amount?

A. No, sir; that was after the dividend was declared.
Q. 163. That was after the declaration of the dividend?
A. That was after the declaration of the dividend.
Q. 164. What is the date of that?
A. November 25, 1898.

(By Mr. TREADWELL:)

Q. 165. You see that you stated that dividend was declared December, 1898.

139 A. Well, I will change the date. Of course this was for the fiscal year. The dividend was declared at a meeting of the board at some later date; so I might as well make the entry correspond with that, change the entry to make it correspond with that.

Q. 166. As you have stated, as I understand it, there was this much profits left undivided after the declaration of the dividend?

A. Yes, sir; and while they relate to profits of the fiscal year closing November 25, 1898, and for previous years the entry was made on December 7, 1898.

Mr. STONESIFER: I will make another objection to that testimony, that it is relating to matter occurring since this case was brought, and since the rate was fixed by the board of supervisors of Stanislaus county.

Further hearing adjourned till Thursday, April 14, 1899, at 10 a. m.

140 THURSDAY, *April* 13, 1899—10 a. m.

Counsel appearing: For complainant, W. P. Treadwell, Esq. For respondents, L. W. Fulkerth, Esq. and C. A. Stonesipher, Esq.

Examination-in-chief of CHARLES Z. MERRITT resumed.

By Mr. TREADWELL:

Q. 167. Mr. Merritt, from the time from which you commenced to pay dividends down to the time of the declaration of the last dividend to which you testified yesterday, what was done in each year with regard to keeping an account of the operations of the company?

A. From the time that the company began to ascertain the annual profits?

Q. 168. Well from that time. You stated yesterday when that was. Now from that time when the books of the company first showed the annual profits, down to the time of the declaration of the last dividend, how were the profits disposed of on the books of the company each year?

A. After ascertaining the net profits for each year the board would determine whether it would declare a dividend, and if so in what amount. After that was determined the dividend account was credited and profit and loss was debited to the amount of the dividend, and the balances of the net profits of the year, were carried to the reserve account.

Q. 169. That was done generally in each year?

A. That was done generally in each year.

Q. 170. What was done with the moneys so carried to the reserve account?

141 A. They were merely held in reserve subject to any disposition that the board of directors might see fit to make of them. As a matter of fact, moneys accumulating in the reserve account have been used in most part in the extension of the works of the canal; that is to say, they have been used in construction, and have actually been treated as capital.

Q. 171. When you stated yesterday that after the declaration of the last dividend there remained the sum of $158,112.58 as undivided profits, exclusive of the $60,000 that you had previously spoken of, you didn't mean to say that there was that much money left in the hands of the company?

A. By no means.

Q. 172. How much actual money was left at that time, after the payment of that dividend, how much actual money did the company have in its treasury?

A. On November 25th, 1898 there was in the treasury $33,219.20.

Mr. STONESIFER: That is all subject to our objection.

Mr. TREADWELL: Oh, yes it all goes in under the same objection.

The WITNESS (continuing): The dividend declared and paid was $10,000 which would leave in cash $23,219.20 in the treasury.

Q. 173. Then the difference between $158,112.58 and $23,219.20 had been previous to that time expended for the purpose of construction?

A. It had.

Q. 174. Now, the questions which I asked you to prepare for yesterday. When was the main canal completed to Los Banos creek?

A. It was completed on or before February 1st, 1874.

Q. 175. Now when you say "on or before" do you mean nearly about that time, or a considerable time before?

A. I mean that it was nearly at that time.

Q. 176. At what time were the services of the constructing

142 engineer of that canal dispensed with?

—. —.

(By Mr. FULKERTH:)

Q. 177. Are you testifying from your own knowledge?

Mr. TREADWELL: All these questions are from the books.

A. During the month of January, 1874, a resolution was passed by the board of directors that his services be dispensed with on February 1st, 1874, on account of the completion of the canal of which he had charge. Subsequently there was a modification of that order so that he should be continued until June or July of that year.

Q. 178. Los Banos creek is in Merced county, isn't it?

A. Yes, sir.

Q. 179. So that at that time no part of this canal extended in Stanislaus county?

A. It did not.

Q. 180. Now at what time was extension A completed?

A. On or about September 26, 1878; before that time, possibly a little.

Q. 181. That extension was to Orestimba creek, wasn't it?

A. Yes, sir.

Q. 182. That point is in Stanislaus county?

A. I believe it is.

Mr. FULKERTH: We admit that it is.

(By Mr. TREADWELL:)

Q. 183. At what time was extension B completed?

A. On or before, I think before, only shortly before, November 1st, 1881.

Q. 184. Extension B is entirely in Stanislaus county, isn't it?

A. It is.

Q. 185. And is the end of the present main canal?

A. It is.

Q. 186. What parallel canals excluding the so-called outside canal have been constructed by the company?

143 A. There is one system of parallel canals which now forms one canal, but it was constructed in three sections so that in the books of account of the company those sections have been used respectively as parallel canal, parallel number 2 and parallel number 3.

Q. 187. When was the first of these sections completed?

A. Parallel canal, or parallel number 1 as we know it by, was completed in 1879.

Q. 188. The second section?

A. Parallel number 2 was completed in June 1883; parallel number 3 in March 1885.

Q. 189. Now these three sections, constituting as you say a continuous canal, do they lie, or how does that canal lie with respect to the original main canal?

A. It is a canal constructed parallel with the main canal, on the lower side, so that the lower bank of the main canal forms the upper bank of the parallel canal.

Q. 190. What was the purpose of this parallel canal, and to what use is it applied?

A. The purpose is to enable the manager or superintendent to supply water for local needs without stopping the flow of water to the lower canal.

Q. 191. That is in Stanislaus county?

A. In Stanislaus county.

Q. 192. And it enables the company to supply consumers in Merced county without diminishing the supply for the people who are consumers in Stanislaus county?

A. Without materially diminishing the supply for the people who are consumers in Stanislaus county.

Q. 193. Without stopping the supply?

A. Without stopping the supply. Without that if they were irrigated in Merced county it would be necessary to close down
144 the stop-gates and to deliver water into the delivery ditches and through the delivery gates, and would materially diminish the flow coming down the canal. This enables them to carry down a much larger head of water for use in Stanislaus county while irrigating along the line in Merced county.

Q. 194. When was the so-called Dos Palos branch constructed?

A. It was completed in June 1894, or very shortly before that time.

Q. 195. Where is that canal situated?

A. It lies partly in Fresno and partly in Merced counties. It takes its water from the main canal at a point in Fresno county, and carries it through a system which we know as Dos Palos Colony canal, the system consisting of a main canal and four branches, some of which extend into Merced county.

Q. 196. What was the purpose, what is the use of that canal?

A. To supply water for irrigation to land lying in Fresno and Merced counties, at some distance from the line of the main canal.

Q. 197. It is then strictly speaking a branch?

A. It is, strictly speaking, a branch.

Q. 198. What is the length of the various portions of the main and branch canals?

A. The main canal to Los Banos creek is 38 miles in length. Extension A from Los Banos creek to Orestimba creek is 29 miles in length. Extension B from Orestimba creek to the present terminus of the canal is 3¾ miles in length.

Q. 199. And then there is an addition to that?

A. The parallel canal system is 27 miles in length, and the Dos Palos branch including the main branch and its branches, is 23 miles in length.

Q. 200. That is all?

A. That is all.

145 Q. 201. That makes a total——

A. (Interrupting.) Of 120¾ miles.

Q. 202. Are all of these canals now, and have all of these canals during the whole of the years of 1895 and 1896 and down to the present time been in actual use for distributing water for the purpose of irrigation?

A. They were.

146 Examination-in-chief of ANDRES GUSTAV ANDERSON, a witness called on behalf of complainant, sworn.

By Mr. TREADWELL:

Q. 1. What is your full name, Mr. Anderson?

A. Andres Gustav Anderson.

Q. 2. What is your age?

A. I am 47.

Q. 3. Where do you reside?

A. Near Newman, or between Newman and Crows Landing, California.

Q. 4. In Stanislaus county?

A. In Stanislaus county, about a mile and a half from Crows Landing.

Q. 5. Are you in the employ of the San Joaquin & Kings River and Irrigation Co.?

A. Yes, sir.

Q. 6. In what capacity?

A. Well, I have charge of a section of canal, the lower section.

Q. 7. What do they call that section?

A. Orestimba section.

Q. 8. How long have you been employed in that capacity?

A. I moved in that house, or on that section, seven years ago the 19th of October.

Q. 9. What are your duties?

A. Well, to take orders for water, to distribute it around amongst the irrigators.

Q. 10. Have you entire charge of that matter on this section?

A. Well, not exactly, no.

147 Q. 11. Well, who else has?

A. Mr. Rouse, the superintendent.

Q. 12. Mr. Rouse is your superior, is he?

A. Yes sir.

Q. 13. But under Mr. Rouse, have you entire charge of that work?

A. Yes sir.

Q. 14. Do you receive orders from any one but Mr. Rouse?

A. I have not so far, no sir.

* * * * * * *

Q. 20. I understand you to say that you take orders for water. Do you mean by that that persons desiring water come to you and request it?

A. Yes sir.

Q. 21. Your entire section lies in Stanislaus county, does it

148 not?

A. Yes sir.

Q. 22. When a person requests water from you what do you do?

A. Well I give him the water the day he asks for it, if I have got it, and if I haven't got it, he has to wait until I have got it for him. I get it as soon as I can, because we don't have water all the time.

Q. 23. What arrangement do you make with regard to turns between the different consumers?

A. Well we have what is called a schedule. I generally carry about four heads of them.

Q. 24. Explain what you mean by a head.

A. Well, we will say four of these pages. (Showing.) Well then at the head of this is the days of the week, day of the week and day of the month, what you might call a calendar for each month. Well, then if a man comes and asks for water for a certain day, say

tomorrow, Friday, I put him on head number 1. Well, suppose a few minutes later another man comes and applies for water on Friday, tomorrow, the same day. I put him on head number 2, and so on, for the four heads, or as many as I can run. Well, when Friday comes if I have got enough water, I give them the water. If I have water on Friday I give it to them, if not, the one that comes first and is on that head number 1 gets the water first.

Q. 25. That is, the one who applied first?

A. Yes, and the one who is head number 2 comes in second, and so on.

Q. 26. Now during the period that you have had charge of that section, has that been your constant practice?

A. It has.

Q. 27. And have you always delivered water to those who applied for it in the order of their application, as you have stated?

149 A. Yes sir.

Cross-examination.

By Mr. FULKERTH:

X Q. 1. You are simply testifying now in regard to your custom?

A. Yes, that is all.

X Q. 2. And you don't know what they do in other sections? Do you know anything about it of your own knowledge? Not from what they have told you, but from your own knowledge.

A. Yes sir; I started the Los Banos section.

X Q. 3. No, but I mean now since you have been on this section.

A. Well, that is all that you wanted to know, was if I had any knowledge of any other sections. I was on the Los Banos section a while.

(By Mr. TREADWELL:)

X Q. 4. That was more than 7 years ago?

A. Yes sir.

(By Mr. STONESIFER:)

X Q. 5. But during these seven years you don't know what has been done on those other sections?

A. No, I don't know anything about that.

150 Cross-examination of CHARLES Z. MERRITT.

By Mr. STONESIFER:

X Q. 1. How long have you been in the employ of this company, Mr. Merritt?

A. Nearly 16 years; I was elected secretary on July 1st, 1883, or at least, my election took effect on that day.

X Q. 2. Have you been continuously in their employ?

A. Yes, sir.

X Q. 3. What are your duties as secretary?

A. I keep the books of the main office; I take the minutes of the meetings of stockholders and of the board of directors and record them. I have charge of their books and papers, and I perform such other duties as the president or the board of trustees may direct.

X Q. 4. What do you mean by keeping the books of the main office?

A. I refer to the principal set of books kept by the company, the only books, in fact, except the superintendent's books, which are subsidiary to the main books, and the contents of which I enter into my books from the reports of the superintendent.

X Q. 5. Do you have any assistants in keeping these books?

A. No; at one time, I think in the year 1884, some time about there, about that time, there was a young man in the office who assisted me a little, and possibly there may have been a few entries made by some other person, but I don't recollect now if this is the case. Speaking generally, I have no assistants.

X Q 6. Are they in your handwriting?

A. Yes, with the exceptions that I have indicated.

151 X Q. 7. As to whether these exceptions that you have spoken of, whether they are correct or not, you don't know anything about that of your own knowledge?

A. Oh, yes, I know that they are correct, because I went over them to see that they were correct.

X Q. 8. By going over them how do you know that they are correct?

A. By comparing the entries with the statements from which they are made, and then proving the books to see that the figures are correct.

X Q. 9. The statements to which you refer were made by somebody else?

A. By the superintendent's book-keeper.

X Q. 10. Do you know that these statements are correct, of your own knowledge?

A. I never compared the statements with the superintendent's books, if that is what you mean.

X Q. 11. You can answer my question whether you know of your own knowledge whether these statements furnished you by the superintendent were correct or not.

A. That question would require really two answers. As the books are now kept and have been kept for four or five years past, I do know, because I have press copies of the superintendent's books sent to me and I make my entries from that; so, of course I know they are correct. Before that time the superintendent made the statements by transcribing his books, and I have assumed that these transcripts were correct.

X Q. 12. How do you know that he furnishes a correct statement of what he does?

A. Press copies are usually pretty sure evidence.

X Q. 13. Do you know what it is to know a thing of your own knowledge?

152 A. I know what I mean by it; I don't know what you mean by it.

Mr. TREADWELL: I don't think the witness understands your question.

Mr. STONESIFER: I think that he does not. I think that he does not know what it is to know a thing of his own knowledge.

X Q. 14. What is it to know a thing of your own knowledge? I don't think you understand what it is to know a thing of your own knowledge.

A. As I stated, I make my entries now from press copies of the superintendent's books, and I think I am entitled to say that I know of my own knowledge that these entries are correct, because these press copies must be correct, as shown by the books.

X Q. 15. Did you have anything to do with the items that are contained in these press copies?

A. I have to do with the bills and vouchers from which these entries are made, and therefore of course I am able to know from my own knowledge that the books are correct because they correspond with the vouchers which are sent me at the same time with the copies of the books.

X Q. 16. Where is the office of the superintendent?

A. At Los Banos.

X Q. 17. That is in Merced county?

A. Yes, sir.

X Q. 18. They are made up there, are they?

A. Yes sir.

X Q. 19. That is where he makes up his accounts?

A. Yes sir.

X Q. 20. And keeps his books, is it?

A. Yes sir.

X Q. 21. You live where?

153 A. I do business in San Francisco.

X Q. 22. At the office of this company in San Francisco?

A. Yes sir.

X Q. 23. And from Merced county then the statements of the superintendent made by him in Merced county are sent to you in San Francisco, are they?

A. They are.

X Q. 24. And from those statements you make up your books?

A. I do.

X Q. 25. Do you know, or have you ever had anything to do with the making up of these books that the superintendent keeps in Merced county?

A. I have nothing to do with the making of the entries in those books.

X Q. 26. As to the items contained in those books you know nothing of your own knowledge.

A. If by that you mean that I didn't make the entries, or didn't see them made, I have no knowledge of them, as I have already stated.

X Q. 27. You could not, could you, have any personal knowledge of what the superintendent does in Merced county?

A. As I understand what is meant by knowing these things of my own knowledge I do, because I have press copies of the books, and I find that they agree with the vouchers which are sent me, and therefore I suppose that I would be entitled to say that I know of my own knowledge that these books are correct.

X Q. 28. Well, then what you understand by your own knowledge, that is what you derive from the vouchers and statements sent you by the superintendent?

A. Yes sir.

X Q. 29. That is what you call knowing a thing of your
154 own knowledge?

A. Yes sir.

Mr. STONESIFER: Well, that is just as I thought. I thought the witness did not understand, did not know what it is to know a thing of his own knowledge.

X Q. 30. When the superintendent makes the return to you that he has received so much money from the sale of water, and you enter it into your books, do you know of your own knowledge that this is correct?

A. When his statement that he has received so much money corresponds with the amount of money that he has sent me that he has received, I am pretty sure that he is right in his statement.

(X Q. 30 read.) Do you wish me to answer it again?

X Q. 31. Yes, I wish you to answer it.

A. I know that it corresponds with the money that he has sent to me. That is it corresponds with the amount, and by that I judge of the correctness of his returns.

X Q. 32. As to whether he has sent the correct amount or not you don't know.

A. As to whether he may have collected money of which he has made no return or no report, I have no means of knowing.

X Q. 33. Then, you have no means of knowing it, and therefore you have no means of knowing whether the superintendent correctly reports to you all of his transactions?

A. There might be transactions of which he made no record, and which he made no return for.

X Q. 34. And your information about these books is derived entirely from these reports? That is, returns made to you by the superintendent?

A. So far as they relate to the superintendent's business.

X Q. 35. So far as your knowledge goes it is derived entirely from these records or reports?

155 A. You must bear in mind that the transactions of the company are not confined to the transactions that originate with the superintendent. There are other transactions the record of which is contained in the books of the company, and they are within my knowledge.

(X Q. 35 read.) Do you wish me to answer that again?

X Q. 36. Yes.

A. It is not derived entirely from the superintendent's reports of the records for the reason that there are many transactions recorded in the books of the company which do not originate with the superintendent, but originate in the home office, and these of course I have immediate knowledge of. As to the transactions by the superintendent which are on record in the books of the company, my knowledge of them is derived from his records and reports.

X Q. 37. That is what I want to know. Well, all the transactions of the company that relate to the supply of water and the collection of rents from the sale of water are made coming through the superintendent, are they not?

A. The superintendent, or those who are acting under his charge and direction originate the transactions with the customers of the company in connection with the sale, delivery and collection for the use of water.

X Q. 38. But all goes through the superintendent.

A. All of that business goes through the superintendent.

X Q. 39. That is through other officers like these sectionmen, like Mr. Anderson, who has just testified, and others, they report directly to the superintendent?

A. They do.

X Q. 40. And the superintendent reports the account directly to the home office in this city?

A. That is the system.

156 X Q. 41. That is the great bulk of the business, is it not? That is, the sale of water and the receipts of rents from the sale of water constitute the great bulk of the business of the corporation?

A. So far as it relates to revenue.

X Q. 42. And that you say all goes through the superintendent in these reports that he makes to you, to the home office?

A. That is what I said.

X Q. 43. Where is your office, Mr. Merritt?

A. The office of the company is 508 California street, San Francisco.

X Q. 44. Is it in the same office as Miller & Lux?

A. The company rents a room from Miller & Lux. Miller & Lux rent from the owners of the building.

X Q. 45. What relation do you sustain towards Miller & Lux?

A. I am in their employ as cashier of the San Francisco office.

X Q. 46. You are cashier of Miller & Lux?

A. I am.

X Q. 47. All of their business goes through your hands?

A. No sir.

X Q. 48. Their cash?

A. All the business that pertains to the cashier's desk in the city office goes through my hands except when I am absent from my desk.

X Q. 49. Do you have a salary from Miller & Lux?

A. I do.

X Q. 50. How long have you been in the employ of Miller & Lux?

A. Since July 1st, 1883 in my last engagement. I was previously employed by Miller & Lux as book-keeper on one of their ranches, but an interval between my engagement in that capacity oc-
157 curred before my engagement in my present capacity; but to be exact I should say that on the 1st of July 1883, I did not commence work for them as cashier. I had another position in the office, and afterwards became cashier.

X Q. 51. How long were you in their employ previous to July 1st, 1883?

A. From some time in March or April, 1881, to December 31st 1882.

X Q. 52. And when did you say you came into the employ of the company now, thie present company?

A. On July 1st, 1883.

X Q. 53. Under whose immediate charge are all the operations of this company?

A. Do you mean to inquire who is the executive officer of the company?

X Q. 54. Yes sir.

A. Mr. Miller, the president, is the chief executive officer.

X Q. 55. He is the Miller of Miller & Lux?

A. He is.

X Q. 56. What are his duties?

A. As president of this company?

X Q. 57. Yes.

A. He presides at the meetings of the board of trustees, and of the stockholders, when present; he signs certificates of stock and checks on the treasury; he gives general directions to the superintendent, touching matters of policy and management.

X Q. 58. He has the personal management and control of the whole works of the company?

A. Subject of course to the approval of the board of directors.

X Q. 59. He has the authority then to order the superin-
158 tendent as far as the distribution of water is concerned? He is the man who orders the superintendent as to how and when and to whom water shall be distributed?

A. I don't think he does that.

X Q. 60. I say he has that authority?

(Objected to on the ground that the question is incompetent. It is a conclusion of law whether he has this authority or not.)

X Q. 61. You don't think he does that?

A. I don't think he gives the superintendent such orders. I have never been present at any time when such orders have been given; I have no means of knowing what he actually has done.

X Q. 62. Do the rules of the company give him the authority?

(Objected to on the ground that the rules themselves are the best evidence.)

A. I will say that there has never been any specific authority of that kind given him by the directors that I am aware of. I am not aware that he has ever exercised any such authority.

X Q. 63. Well, the board of directors, as stated, since Mr. Miller had control, has been a board of directors that he controls, has it not? He controls a majority of the directors, does he not?

A. This board of directors is elected by the stockholders, and it is true that he holds a majority of the stock, or has control of the majority of the stock.

X Q. 64. And he has control of a majority of the directors?

A. I don't know that I have any means of knowing that fact. This is rather an indefinite question whether he has control of the men. It is a matter that I would not be able to determine.

X Q. 65. Who are the directors there that represent his interest, Mr. Merritt?

Mr. TREADWELL: By "his interest" you mean his individual interest, or the interest of Miller & Lux?

159 Mr. STONESIFER: I am talking about the interest of the whole thing, Miller & Lux, and his individual interest.

X Q. 66. Who are the directors that represent Miller & Lux, Mr. Merritt?

A. Mr. Allen, Mr. Nickel and Mr. Potter are understood to represent the interests of Miller & Lux.

X Q. 67. And Mr. Miller himself?

A. And Mr. Miller himself, certainly.

X Q. 68. Mr. Nickel is a son-in-law of Mr. Miller, is he?

A. Yes, sir.

X Q. 69. Mr. Potter is in some way related to the firm of Miller & Lux, is he; that is, of some of the Lux side?

A. Yes, he is executor of the will of Charles Lux, deceased.

X Q. 70. What relation does he have to the Lux interest?

A. He was a son of the late Mrs. Lux.

X Q. 71. Now, who is Mr. Allen?

A. Mr. Allen is a merchant doing business on Market street in this city.

X Q. 72. How many shares of stock has he?

A. 100 standing in his name.

X Q. 73. Is it his?

Mr. TREADWELL: State of your own knowledge; not otherwise. For the purpose of this action, I will admit that the stock standing in the name of Mr. Allen is held by him for the benefit of Miller & Lux, or for some interest of Miller & Lux.

(By Mr. STONESIFER:)

X Q. 74. How about the interest of Potter's stock?

Mr. TREADWELL: I will make an admission for that. Potter is a large stockholder in the corporation of Miller & Lux in his own interest and in the interest of his wife, and holds an interest in this corporation as representing that interest.

160 (By Mr. STONESIFER:)

X Q. 75. How much stock does he have in this canal company?

A. I have not the amount in my mind. I should have to refer to the books.

Mr. TREADWELL: With regard to my admission as to Mr. Allen I will qualify that by saying that Mr. Allen's wife is a stockholder of Miller & Lux, and he represents her interest.

The WITNESS: Mr. Potter has 4,250 shares of the stock of the San Joaquin & Kings River Canal and Irrigation Company.

(By Mr. STONESIFER:)

X Q. 76. Is that his own stock, or does it belong to that portion of the stock that is held by Miller & Lux?

A. I don't know.

X Q. 77. You gave us yesterday the amount of stock held by Miller & Lux. Now you have placed that at 56,000 and some odd shares; is this a part of that?

Mr. TREADWELL: My question was, and his answer to that question was in regard to the stock held by Miller & Lux, or by any members of the corporation.

A. This stock stood in his name before my connection with the company. I have no knowledge personally of the origin of his title to it.

(By Mr. STONESIFER:)

X Q. 78. You told us yesterday that the stock of the company owned by Miller & Lux was 54,503 shares. Now this 4,250 that you have told us is in the name of Mr. Potter, is that a part of the 54,503 shares?

A. I did not make the statement as you attribute it to me; but the 4,250 shares held by Mr. Potter is a part of the 54,000-odd shares that I alluded to.

X Q. 79. Now how much stands in the name of Mr. Nickel?

A. 3,900 shares.

X Q. 80. Is that part of the 54,503 shares that you alluded

161 to yesterday?

A. Yes, sir.

X Q. 81. Who are the other stockholders of the company?

A. Mary N. Allyne——

X Q. 82. (Interrupting.) Are there many of them?

A. About 25 of them.

X Q. 83. Give the number of shares that each one holds.

A. There are 62½ shares belonging to Mary N. Allyne.

X Q. 84. Does that book show when stock was acquired by each one?

A. No, sir.

X Q. 85. Do you know when the stock was acquired by each one of these stockholders?

A. The stock ledger shows that. I am testifying now from the

list of names appearing in the dividend book, which is the most convenient form for obtaining the information which you seek.

X Q. 86. Go on, give us the list of the stockholders and the amount held by each one.

Mr. STONESIFER: We will ask that the Complainant's Exhibits 4, 5, and 6 be copied into the record, and that they be included in the transcript.

Mr. TREADWELL: No objection to that.

A. This is a complete list of stockholders which you asked for: E. T. Allen, 100 shares; Mary N. Allyne, 62½ shares; Wm. Alvord, 1000; Eliza Baum, 4,668; J. E. Bell, 1,913; C. C. Burr, 62½; E. C. Burr, 62½; Mary E. Dutton, 100; Clara E. Cunningham, 800; J. B. Haggin, 500; Mrs. Helene Holly, 1000; Lucy B. Holman, 62½; Winfield S. Jones, 800; Jerome Lincoln, 500; D. E. Martin, 750; Miller & Lux 46,253; Henry Miller 13,941; Louis F. Monteagle, 323; Mrs. Julia T. Moss, 4,464; J. Leroy Nickel, 3,900; Cal-
162 vin Page, 4,000; H. and W. Pierce, 1000; J. S. Potter, 4,250; Sophia G. Pierce, 100; Emily F. Pope, 1000; James Rolph, trustee, 4,941; W. H. Talbot, 100; F. C. Talbot, 100; Lloyd Tevis, 500; Emily F. Walker, 100; D. Henshaw Ward, 100; Geo. Whittell, 2,397; E. L. Woods, 150; total, 100,000.

X Q. 87. Now will you turn to that book to show us the date at which each one acquired their stock?

A. I don't know whether that can be readily shown because they did not each one acquire their holdings at one time. There are several accounts, debit and credit. They bought and sold, and bought and sold, so that the date at which each particular amount of stock was acquired in every particular case cannot be determined.

X Q. 88. Are these present stockholders the stockholders of the time the board of supervisors fixed these rates?

A. They were the stockholders of December 7, 1898, when this dividend was declared.

X Q. 89. Were they the same stockholders when this rate was fixed by the board of supervisors?

A. No; I know there have been changes, and they are certainly not held in that proportion. There have been transfers of stock since that time.

X Q. 90. That is what I desire more than anything else.

A. You did not so specify in your question. I have no list showing the stockholders at that exact date. I have a list made the 5th of December, 1895 and another list made the 30th of November, 1896.

X Q. 91. You can't tell then whether there have been any changes made between the 24th day of June and the 30th of November?

A. I can by looking at my transfer journal. (After examining.) I find upon examination that there were no transfers of stock between April 6, 1896 and June 26, 1897, so that the list that
163 I have here dated November 30, 1896 would be a correct list for the date that you desire. This is a list of stockholders

on the 30th day of November, 1896, just the same as it would have been if made on the 24th day of June 1896. There were no transfers between those dates. (Reads.) "E. T. Allen, 100 shares; Mary N. Allyne, 62½; Wm. Alvord, 1000; Eliza Baum, 4,668; J. E. Bell, 1,913; C. C. Burr, 62½; E. C. Burr, 62½; Mary E. Dutton, 100; J. M. Cunningham, 800; J. B. Haggin, 500; Mrs. Helene Holly, 1000; Lucy B. Holman, 62½; Winfield S. Jones, 800; Jerome Lincoln, 500; D. E. Martin, 750; Miller & Lux, 46,253; Henry Miller, 9,100; Louis F. Monteagle 323; Mrs. Julia T. Moss, 4,464; J. Leroy Nickel, 3,900; Calven Page, 4,000; H. and W. Pierce 1,000; J. S. Potter, 4,250; Mrs. Sophia G. Pierce, 100; Emily F. Pope, 1000; James Rolph, trustee, 4,941; W. H. Talbot, 100; F. C. Talbot, 100; Lloyd Tevis, 500; Emily F. Walker, 100; D. Henshaw Ward, 100; D. Henshaw Ward trustee, 4,841; George Whittell, 2,397; E. L. Woods, 150. Total, 100,000.

(By Mr. FULKERTH:)

X Q. 92. Then the only changes from the list which you first gave us and the list which you now give us are as follows: In the record first given us you had 800 shares to Ciara E. Cunningham; that is correct, is it?

A. Yes sir.

X Q. 93. And that was changed from J. M. Cunningham, deceased, to her, or her representative?

A. Yes sir.

X Q. 94. He was the one who had that on June 26th?

A. Yes sir.

X Q. 95. This was transferred to Clara E. Cunningham, and it stands in her name?

A. That is right.

X Q. 96. In the list you first gave us Henry Miller had
164 13,941 shares. On the 24th of June, 1896, there stood in his name 9,100 shares. Since that time he has acquired 4,841 shares which on June 24th stood in the name of D. Henshaw Ward, trustee.

A. That is right.

X Q. 97. With that exception the lists are the same?

A. Yes, sir; in the former list, in the list of June 24th, 1896, Miller & Lux as the firm of Miller & Lux owned the stock standing in their name. Now it is held by the corporation.

(By Mr. STONESIFER:)

X Q. 98. As I understand you, since this order of the board of supervisors was made fixing the water rate, Mr. Miller has purchased 4,841 shares, which shares stood in the name of D. Henshaw Ward as trustee on June 24th, 1896?

A. Yes, sir.

X Q. 99. That is the date on which these rates were fixed by the board of supervisors of Stanislaus county?

A. Yes, sir.

X Q. 100. You stated a while ago, in answer to Mr. Treadwell

that on November 29th, 1898, there was in the treasury cash to the amount of $33,219.20.

A. I recollect stating the amount; whether that was the exact amount I don't remember. I have not the paper before me.

X Q. 101. You declared a dividend on that day, and paid out $10,000 in dividends?

A. About that time.

X Q. 102. You stated that the remainder, $33,219.20 was paid towards construction?

A. No, sir.

Mr. TREADWELL: He said the difference between these amounts had been paid out for construction.

(By Mr. STONESIFER:)

X Q. 103. Then you had on November 25, 1898, $158,000, was that it?

165 A. $158,112.58, if that was the correct amount. Those were undivided profits, but not cash on hand.

X Q. 104. Now what became of that?

A. It was mostly used in construction.

X Q. 105. Was that all used in construction except this $10,000 which was paid out for dividends, and the $23,000?

A. This amount of $158,000 includes the amount carried to reserve after the dividend of $10,000 was declared.

X Q. 106. Then when you declared a dividend you had $168,000?

Mr. TREADWELL: Yes until the dividend was declared.

(By Mr. STONESIFER:)

X Q. 107. That was on November 25, 1898?

A. That was on November 25, 1898, the account which I testified from as showing the balance of $158,112.58, that is the reserve account, and that is the balance that was shown on December 7, 1898, after the remainder of the net profits for the fiscal year ending November 25, 1898, had been carried to that account.

(By Mr. TREADWELL:)

X Q. 108. So that it did include the $23,219.20, but did not include the $10,000.

A. No, that $23,219.20 that you are speaking of now refers to the cash and the amount that was carried to reserve account was not the balance of cash on hand, but of the net profit for that year.

(By Mr. STONESIFER:)

X Q. 109. That money was spent, most of it, was it not, in construction of the canal above this one?

(By Mr. TREADWELL:)

X Q. 110. The present canal of the company that runs into Stanislaus county?

A. This $158,000 represents profits that had accumulated during

the 12 years which had been used in construction or in carrying on the work of the company, instead of being divided up in dividends.

(By Mr. STONESIFER:)

X Q. 111. When did you commence the construction of
166 this—what do you call this canal that is above the present canal?

A. We call the canal that was recently constructed the outside canal. That is the name of it.

X Q. 112. Where does that start from?

A. I suppose, properly speaking, it starts from Fresno slough, at a point a little above the headgate, the old headgate of the canal.

X Q. 113. The same dam which supplies the present canal as it runs in Stanislaus county supplies this canal?

A. The same dam that is used to divert water into the old headgate of course is used to divert water into the new headgate also. There is but one dam in the river.

X Q. 114. And that carries it into this new canal?

A. There has been a new dam constructed, so that it is not identically the same dam that was used. The company uses one dam for the purpose of diverting water into both of these canals.

X Q. 115. When did you commence the construction of this outside canal, as you call it?

A. The first charge of that account is an item charged to that account under date of September 15, 1896. That is the nearest date that I can fix. I don't know exactly the date on which they began work, but that is approximately the date.

X Q. 116. Do you know the size of that canal?

A. I don't know; I have seen it stated, but I have not fixed it in my mind.

X Q. 117. Do you know whether it is a larger canal than the present canal?

A. My recollection is that it is broader and shallower. A comparison of the capacity of the canals I am not able to make.

X Q. 118. Will you give us the cost of that canal up to the present time?

Mr. TREADWELL: Do you mean the cost of construction?
167 Mr. STONESIFER: The cost of construction.

A. The cost of construction as appears by the books of the company is $85,877.82.

X Q. 119. Now where does that canal terminate?

A. At Los Banos creek.

X Q. 120. Now what is the length of it from its head to Los Banos creek?

A. I have not the exact statement of it here.

X Q. 121. I thought you gave it this morning.

A. No, that was the main canal.

X Q. 122. It is the same length, is it not?

A. No, it is not the same length, because it carries this water

partly through the old canal. The headgate I spoke of as a point a little above the old canal in Fresno slough is used to divert water into China slough. It carries it down to the old canal, and the water is carried through the old canal to the point from which it is diverted into the outside canal, and I don't know exactly the distance from the headgate, without reference to data, which I have not here, at which this water is diverted into the new canal.

(By Mr. FULKERTH:)

X Q. 123. Could you give us that data? Could you give us the dimensions of the new canal, could you without much difficulty?

A. Not without going to the office.

X Q. 124. I don't mean now, but I mean at some future time.

A. Oh, it could be had. I understood that the engineer was to give you this data. I expected only to be required to testify from the books here.

(By Mr. STONESIFER:)

X Q. 126. You don't know, approximately, the distance?

A. I should rather not make any guesses; of course, I have a general idea; I don't think it would do any good to make
168 any statement on that point without having reference to the data in the office.

X Q. 127. That canal is built by the company to irrigate lands other than the lands that lie below the present canal, that runs into Stanislaus county, is it not?

A. Yes, sir.

X Q. 128. It is not intended to irrigate any of these lands that lie below the present canal that runs into Stanislaus county?

A. The purpose of it is to bring new land under irrigation.

X Q. 129. It draws a larger amount of water, does it not?

A. Considerably larger.

Mr. TREADWELL: What do you mean by drawing a larger amount of water?

Mr. STONESIFER: The canal itself will take a great deal more water than the other canal.

Mr. TREADWELL: This witness does not know anything about it. We will bring the surveyor who will testify to that.

(By Mr. STONESIFER:)

X Q. 130. Is construction still going on there, Mr. Merritt?

A. No, sir.

X Q. 131. It stopped at Los Banos creek?

A. Yes, sir.

X Q. 132. Will it go on any further?

A. I don't know.

X Q. 133. Have you any minutes there of the board that pertain to the construction of this canal?

A. Yes, in the record of the proceedings of the board?

X Q. 134. I wish you would read them.

(Pending the answer of the witness at 12.30 p. m. recess was had until 2 p. m., at which hour the cross-examination of the witness was proceeded with as follows:)

169 X Q. 135. What book are you reading from, Mr. Merritt?

A. I am reading from a book labeled "Records S. J. & K. R. C. & I. Co. 2." It is the second volume of the minutes of proceedings of the board and the stockholders. The first reference to the outside canal is contained in the minutes of the trustees' meeting of September 8th, 1896, found on page 22 of these records. It reads "Mr. Miller, president of the company in the chair."

"The secretary being out of town it was moved by Mr. Nickel "and seconded by Mr. Ward that D. Brown act as secretary *pro* "*tem.*

"The president stated that the purpose of the meeting was to "consider the advisableness of constructing a new canal 50 feet in "width at bottom from a point on Fresno slough about ⅛ of a mile "above the present head gate to a terminus for the present in Los "Banos creek, and that the estimated cost of construction was about "$40,000. He further stated that if the proposed canal were con- "structed it would furnish irrigation for about 20,000 acres of land, "would enable the company to clean the present canal and also "give an outlet to the flood waters, which at certain seasons have "frequently been a source of danger to the present works. After "consideration it was moved by Mr. Nickel and seconded by Mr. "Martin and unanimously agreed to that the president be author- "ized to construct, in the most economical manner possible, a canal "as proposed, from Fresno slough to Los Banos creek, a distance of "about 40 miles." On page 23 of the minutes of trustees' meeting on November 30, 1896. (Reads:) "The president stated that the "object of the meeting was to declare the usual dividend. The com- "pany's annual balance-sheet showed that the net profits of "the year amounted to $42,885.11. The treasurer had in hand

"$55,618.95. Of this, about $20,000 would be required to pay

170 "Miller & Lux for work and material for account of the new "'outside canal,' about twenty miles of which had been com- "pleted. The usual reserve of $10,000 should be retained for main- "tenance. This would leave $25,000 in the treasury of which about "$20,000 would be required for completion of the 'outside canal.' "Work on this had been suspended, however, until spring and when "resumed the revenues for the coming year would be near at hand. "He therefore recommended that a dividend of twenty cents per "share be declared." Further on, in the records of the same meeting, on page 24 appears the following:

Mr. FULKERTH: Does that show how much of the canal had been completed at that time?

A. About 20 miles. (Reading:) "Mr. Miller then made a verbal "statement of work done on the new canal and benefits which he "deemed assured. No accounts had yet been rendered showing cost "of construction, but he assured the board that the work was the "best and cheapest he had ever seen. A vote of thanks to Mr.

"Miller for his services to the company in projecting and carrying "forward this very benefi-ial work was moved by Capt. Martin and "unaminously carried."

(By Mr. STONESIFER:)

X Q. 136. Who was present at this meeting?

A. Henry Miller, president, and Trustees Allen, Martin, Nickel, Talbot and Ward. Would you like to have me state who were present at each meeting?

X Q. 137. Yes, that would be better.

A. Except of course at the stockholders' meeting.

X Q. 138. Yes.

A. In the minutes of the stockholders' meeting held December 1st, 1896, President Henry Miller in the chair, on page 26 there appears the following: (Reads:) "The president made a verbal report

"to the effect that about twenty miles of the new canal known
171 "as the 'outside canal' had been practically completed so far
"as earthwork was concerned and that strustures were now "building in the same. The cost had not yet been ascertained, but "he predicted that it would be the best and cheapest work ever done "by the company." In the minutes of the trustees' meeting held November 26th, 1897, there being present President Henry Miller in the chair, and Trustees Martin, Talbot, and Ward, appears the following on page 32. (Reads:)

"The president reported verbally to the board that the outside "canal commenced in September 1896 had finally been completed "to Los Banos creek, together with a system of waste ditches, carry- "ing water from outside to main canal, parallel canal, drainage "canal, to gather and convey to main cacal all waste irrigation "water, and three delivery ditches, making with their several struc- "tures a complete and most satisfactory system. A map of the canal "was exhibited, showing main and outside canals and wasteways, "which have a fall of ten or eleven feet to the mil*l*, though not con- "templated in the original plans and estimates, were of great im- "portance in the way of economical use of water and for the pur- "pose of drying old canal upon occasions when it was necessary to "clean same. The heavy grade had necessitated the erection of a "number of expensive structures in the way of stop and drop gates, "and these, together with the drainage and delivery ditches and "some changes in location of headworks and canal since original "estimates were submitted, had resulted in doubling the cost of con- "struction as compared with original estimates, the final cost "being $83,598.14. He believed this money to have been well "expended, however, and that the additional cost was more than "returned in additional facilities. He asked the board to appoint "a committee to examine and report to them upon the work

"performed, with a view to obtaining from an unbiased
172 "and competent source an independent report both upon the
"nature and value of the same, and upon all his acts in con- "nection therewith, it having been necessary for him to obtain most "of his supplies and implements from Miller & Lux. It was unani-

"mously voted that a committee of three be appointed to examine "and report to the board upon the outside canal system, its cost, "quality, and utility, and the president's acts in relation to the con- "struction thereof, said report to be made at a special meeting of "this board, and that said committee be empowered to employ an "expert on construction. The chair requested the trustees present "to make nominations for said committee, it being his wish to have "no part in the selection. Thereupon Messrs. D. E. Martin and "W. H. Talbot were nominated by Mr. Ward. D. Henshaw Ward "was nominated by Capt. Martin, and the three gentlemen named "were duly appointed to constitute said committee." In the min- utes of the trustees' meeting of March 28th, 1898, President Miller being in the chair, and Trustees Allen, Nickel, Potter and Ward being present, besides the president, there appears on page 42 the follow- ing: (Reads:) "The chair stated that the object of the meeting was "to hear the report of the committee appointed November 26th, "1897 to examine and report to the board upon the outside canal "system, its cost, quality and utility, and the president's acts in re- "lation to the construction thereof, and to take such action upon "said report as might seem necessary.

"Mr. Ward, as chairman of said committee, reported that, acting "under the authority given them, the committee had employed Mr. "C. H. Schussler as an expert to examine the outside canal system "in detail. Mr. Schussler had special qualifications for the work,

"and the committee reposed implicit confidence in his find-

173 "ings. He had reported to them in writing under date of

"December 14, 1897, which report the committee now pre- "sented as its own report to the board.

"The report of Mr. Schussler was then read to the board. It con- "tained a detailed description of the new system with its various "structures and the cost of same, concluding as follows: 'I consider "'these expenditures for all structures as well as excavations eco- "'nomical and do not think these works could be duplicated by con- "'tract at this cost, in such a thorough manner.' He then pro- "ceeded to call attention to the condition of the brush dam in the "San Joaquin river at the company's head works, which would be "subjected to additional strain in the operation of the outside canal, "and suggested that a pile dam be constructed at a cost not to ex- "ceed $15,000.

"On motion of J. L. Nickel, duly seconded, the report was ac- "cepted and placed on file and the committee discharged." This is all I have been able to find in the minutes bearing upon the subject of the outside canal.

X Q. 139. Now will you give that report?

A. The report of Mr. Schussler?

X Q. 140. Yes.

A. Yes, I have it.

Mr. STONESIFER: We will offer this in evidence, with the minutes that have been read, and will ask that it be copied into the record.

(Marked "Respondents' Exhibit A.")

(NOTE BY STENOGRAPHER.—The report will be found among copies of exhibits.)

(By Mr. FULKERTH:)

X Q. 141. Has anything else been done by the trustees with reference to this canal, the outside canal, Mr. Merritt?

A. Nothing that I recollect.

X Q. 142. If anything had been done you would know of
174 it, would you, being secretary?

A. Yes sir. That is the first that appears in the records, and everything has been placed before you that I know of touching the outside canal.

X Q. 143. Has the president done anything only what you have stated?

A. Not that I am aware of.

X Q. 144. At least if he has done anything more than what appears there, he has done it without authority, has he not?

Mr. TREADWELL: We object to that as calling for a conclusion of the witness.

(By Mr. FULKERTH:)

X Q. 145. If he has done anything more with reference to this outside canal.

A. I know of nothing with reference to the outside canal that has not been read from the minutes, or contained in the results of the accounts that I have read.

X Q. 146. And the authority that the president had in the matter is what appears from those minutes that you read?

(Objected to as calling for an opinion of the witness. The witness can only state facts.)

A. I have read all of the record.

X Q. 147. What was the stock of this company worth on June 24th, 1896?

Mr. TREADWELL: I would like to ask counsel what he means by what it was worth?

Mr. FULKERTH: What was it worth at its market value?

A. It has no market value that I know of. If one wants to sell, he has to sell for what he can get, and if he wants to buy he has to pay what is asked for it. There is no recognized market value.

X Q. 148. There have been sales going on, have there not?

A. There have been sales in times past.

175 X Q. 149. Long after that, or immediately preceding that?

A. I don't remember whether there was anything at that particular time or not.

X Q. 150. I mean preceding that.

A. I can tell you by reference to my transfer books when stock was being transferred. That is the best way to arrive at that probably. But I would like to have the time stated.

X Q. 151. Any time from June 24th, 1896, about that time and before that.

A. There were some transfers March 19th, 1896. Whether the transfers represent a sale or not I could not state. There was some stock transferred by Calvin Page to Louis Monteagle. On April 6, 1896 there was a transfer from Haggin to Tevis. I know nothing about that.

X Q. 152. Do you know what was paid for that?

A. I know nothing about it; I simply know that I made a transfer in that year.

X Q. 153. Do you know of any sales being made since then?

A. Yes, in 1897, on January 26th there was some stock transferred from D. Henshaw Ward.

Mr. TREADWELL: Trustee?

A. That was simply a change in the distribution of the stock. It was D. Henshaw Ward, to D. Henshaw Ward, trustee. He transferred the same stock that was held by him in person to himself as trustee, retaining a smaller block in person. In February 1897 there was a transfer from D. Henshaw Ward, trustee, to Henry Miller.

X Q. 154. What was the purchase price of that?

(Objected to as immaterial and incompetent; that the value of the stock is immaterial in the case, and if the value is to be proven it is to be proven by its market value, not by a particular sale.)

A. I am unable to tell you. The books of this company
176 don't show anything about it.

X Q. 155. Do you know?

A. I did know at the time, but I don't remember.

X Q. 156. You say you did know?

A. I did know at the time, but I don't remember the price that was paid.

X Q. 157. About what was it?

A. I decline to make any guess. I will state all that I know, but I will not guess at anything.

X Q. 158. When was that done? When was that transfer made?

A. February 19th, 1897.

X Q. 159. That was a little over a year ago. Your memory ought not fail you in that time.

A. Oh, I don't charge my memory with all these small matters that occur. I am passing myriads of different matters. I trust such things to my books.

X Q. 160. You don't remember anything about what it was?

A. No, I could not remember so as to fully state. It is so long ago. I could not give any answer. I have known of various transactions at various times, but which was which I cannot now recollect. I don't like to give any guesses or approximations when I am giving testimony. I will state all that I know, and I will stop there.

X Q. 161. You have no idea now what it was?

A. I have stated all that I think I can say on that subject. I tell you that I can't remember.

X Q. 162. Have you any idea about it?

Mr. TREADWELL: We object that the witness is not bound to state anything except what he knows and remembers.

(By Mr. FULKERTH:)

X Q. 163. You have no idea whatever of it now, have you?

A. I could not be sure within a dollar or two what the
177 price was.

X Q. 164. You mean within a dollar or two a share?

A. Yes sir.

X Q. 165. Would you say it was $5 a share?

Mr. TREADWELL: We object to that and advise the witness he need not answer that question unless the court so directs. If you want to know that I will ascertain the fact for you. I don't want any guesses here.

A. I have stated here all that I know about the facts; I say I don't remember the facts.

(By Mr. FULKERTH:)

X Q. 166. You could ascertain that fact, could you not?

A. I could ascertain it from Mr. Miller's books, having access to them. Of course I could refer to these books and find out in that way.

X Q. 167. Do you keep these books also?

A. I keep their cash blotter. I don't keep their books in any other sense.

X Q. 168. Would their cash book show?

A. Their cash book would show what was paid.

X Q. 169. The number of shares purchased.

A. I don't remember particularly, but I presume it shows that perfectly.

(By Mr. STONESIFER:)

X Q. 170. Will you examine that and let us know?

Mr. TREADWELL: No, we shall object, and we shall advise the witness that he need not answer any such question as that.

(By Mr. FULKERTH:)

X Q. 171. I will ask you to examine that book and ascertain from the cash book of Miller & Lux that you say you keep, from that book ascertain the amount of shares purchased by Henry Miller from Mr. Ward and the amount paid for such shares
178 on the 19th of February, 1897. We simply ask you to do that. If you do not desire to do it, we cannot make you do it, of course.

Mr. TREADWELL: I am sure that the witness will not do it. As I say if you want to know the fact I will enable you to ascertain it.

(By Mr. STONESIFER:)

X Q. 172. Are there any other sales, Mr. Merritt?

A. There is a transfer March 29th from J. M. Cunningham to Clara E. Cunningham, executrix.

X Q. 173. That is simply a transfer of representation, by death?

A. There are no sales that I know of.

X Q. 174. Are there any others which appear on the books?

A. There are no other transfers here that represent sales, as far as I am aware.

X Q. 175. The only sale since 1896 then has been the purchase made by Mr. Miller from Mr. Ward?

A. I am unable to state whether there have been any other sales or not. That is the only sale that I know of.

X Q. 176. It is the only sale that appears upon the record books?

A. No, I have read you other transactions that may or may not represent sales. I have no means of knowing what passed between the parties.

X Q. 177. Do your books show any other transactions except those that you have mentioned?

A. No, not since the date that you have ment-oned, I think that was February 19, 1896. Beginning at the first of 1896 I have read you everything except some of these later ones which you said you did not care to hear because they did not represent sales.

X Q. 178. Now starting out generally and going back.

179 A. On December 17th, 1895 there was a transfer from Henry Miller to Miller & Lux.

X Q. 179. How many shares?

A. 400 shares.

X Q. 180. What was the purchase price of that?

Mr. TREADWELL: We make the same objection. In the first place it does not appear that it was a sale at all.

A. My opinion is that it was not.

(By Mr. STONESIFER:)

X Q. 181. Do you know anything about it?

A. Well I know, that is I suppose, that it was stock that had been held in his own name that had belonged to the firm, and that was simply transferred back to the firm. I see a transfer on November 25th.

X Q. 182. What year?

A. 1895, of several blocks of stock, to Henry Miller.

X Q. 183. Who from?

A. Samuel I. C. Swezey, 500 shares; James E. Gordon, 500 shares; J. C. Wilmerding 5,841 shares; J. C. Wilmerding 100 shares; J. C. Wilmerding, 149 shares; J. C. Wilmerding, 10 shares; Thomas J. Lamb, 2,000 shares; making a total of 9,100 shares transferred to Henry Miller.

X Q. 184. What is the purchase price?

A. I don't know.

X Q. 185. You stated in your testimony before the board of supervisors, did you not, in this same matter, when these rates were being fixed, that you knew of a sale a short time before that at $2.50 a share.

A. I don't remember my testimony. I could refresh my memory by referring to it in the transcript.

X Q. 186. Do you remember any sales of stock of this company having been made prior to the order of the board of supervisors fixing the rates spoken of here, at the rate of $2.50 a share?

180 Mr. TREADWELL: We object to any testimony with regard to sales of shares of stock on the ground that it is immaterial in this case; that it is not competent testimony to prove the value of the shares. If you care to answer, Mr. Merritt, answer only from your own knowledge.

A. I remember seeing a record of a sale of stock that occurred before I had any connection with the company, but I suppose that would not be considered to be anything that I had knowledge of. Whether there were any sales at that price within my knowledge, I am not now certain. Whether the price that I have in mind as the price mentioned, or referred to, was the price that was connected with this sale and which I have information of only through the records, or whether that price was the basis of a sale of which I have had personal knowledge, I am not now able to tell.

X Q. 187. As secretary of this company you say that you are not able to say what the value of the shares of this company is at the present time and at the time that this order was made by the board of supervisors.

Mr. TREADWELL: We object to that. Counsel must state what he means by value, whether he means market value or otherwise.

A. I am not. In answering that, I refer to the market value, supposing that was the intention of the question.

(By Mr. STONESIFER:)

X Q. 188. You don't know the market value?

A. No.

X Q. 189. Has it any market value?

A. No, not that I am aware of.

X Q. 190. What is its real value?

Mr. TREADWELL: We object to that. "Real value" has no meaning. The witness cannot possibly understand or answer such a question. There is no value known to the law, but market value or cost price.

181 (By Mr. STONESIFER:)

X Q. 191. What is the cost price?

A. $10.15 was the total value of the assessments levied.

X Q. 192. So that because an assessment of $10.15 a share was levied on it, would you say that it was worth $10.15 a share?

A. No, I don't pretend to say anything about it.

X Q. 193. Then you, as secretary of this company, are unable to say or give any information respecting the market value or actual value or any value as to this stock?

Mr. TREADWELL: We object to that as calling for a conclusion of the witness as to what his testimony has been. He has already testified about all the facts within his knowledge concerning the value; the question assumes that he has not.

A. As secretary of this company I am able to state only what are the amounts of the assessments against the stock. Any other questions relating to the value I am unable to answer.

(By Mr. STONESIFER:)

X Q. 194. Do you know of any sales of stock previous to this order of the board of supervisors, at $2.50 a share?

(Objected to on the ground that the question has already been answered.)

A. I am not certain whether I have any knowledge of a sale at that price or not.

X Q. 195. You know whether you have any knowledge of it, don't you?

A. I have previously stated that I am unable now to determine whether the price of $2.50 which I have in mind as connected with some sale was a matter of which I had personal knowledge or whether I simply saw it in the records of the company.

X Q. 196. There is then an idea in your mind that such a sale has taken place?

182 A. There was a record in the minutes of the company of a sale to a former secretary, of 100 shares which the company had on hand, at $2.50 per share, or something like that. It had come into their possession in some way, but how I don't now recollect, and if I am correct in my remembrance, they agreed to sell it to him at $2.50. But whether this is the only case, I am not now able to say.

Mr. TREADWELL: I move to strike out that answer on the ground that the answer refers to a document in writing, a record of the company, which is the best evidence.

(By Mr. STONESIFER:)

X Q. 197. Do you know whether Mr. Miller paid $4 a share for some of the stock that he got?

(Objected to on the same ground as before.)

A. I don't now recollect any price of sale of stock to Mr. Miller.

X Q. 198. Then you have no information at this time about his ever having paid $4 a share for stock?

(The same objection.)

A. I have no recollection at this time of the various prices which he has paid for stock.

X Q. 199. Have you any recollection at this time of his having ever paid $6 a share for stock?

A. It would be the same answer. I have no recollection at this time of the price of any sales of stock to Mr. Miller.

X Q. 200. You have no information, no recollection at this time of the price that he paid for the stock of this company? Is that what you state?

A. I am not able at this time to state, from my memory, what he has paid for stock.

X Q. 201. Can you ascertain what he paid for it?

A. I have access to the books of Miller & Lux.

X Q. 202. Are you his confidential agent?

A. I am cashier for Miller & Lux.

183 X Q. 203. Are you confidential agent for Miller & Lux?

A. I have served them in no other capacity except as I am connected with the company.

X Q. 204. You serve Miller & Lux in a confidential capacity, do you?

A. Sometimes my relations are confidential.

X Q. 205. You keep their books, do you?

A. I am their cashier.

X Q. 206. Do you keep their books?

A. I keep their cash blotter.

X Q. 207. Does that show the sales or purchases that he has made on account of this stock?

Mr. TREADWELL: We object on the ground that it has already been answered by the witness. He stated expressly and it is simply going over the same ground again.

A. It does not always show the details of his personal transactions.

(By Mr. STONESIFER:)

X Q. 208. I am asking about Miller & Lux. You have told me that you were book-keeper for Miller & Lux.

A. As far as the cash account only. I told you that Miller & Lux' cash book does not always show what personal transactions they had.

X Q. 209. I am not asking you about Miller & Lux' personal transactions. I am asking you about Miller & Lux' purchase of this stock.

A. I don't know of any purchase by Miller & Lux.

X Q. 210. They own some, as you said the minutes show.

A. Yes, they owned it when I came into the office in San Francisco.

X Q. 211. Have they purchased any since?

A. They have not, so far as I recollect, they have not purchased any. Mr. Miller has purchased some in his private capacity;

184 the sales that I referred to were all his personal transactions, in so far as he drew money against his account with Miller &

Lux for that purpose, I know of the charge against his account; but what those may show, I do not now know. I can't recollect.

X —. 212. You did at one time, then, know what he paid for this last block of stock?

A. I may have known from hearsay what he paid. It may have been given me in such shape that the record showed in detail. I can't tell.

X Q. 213. The question was you did know at one time.

A. I have already stated that I knew what was charged to him. Whether I know the details so as to know fully what price he was paying, I am not now certain. I may have had hearsay reports; but what absolute knowledge I had, I could not ascertain without examination of the records. This is a matter that I have not given any thought to since the occurrences.

X Q. 214. That occurrence was rather a recent one, and you say it has entirely escaped your memory.

A. I didn't say that. I didn't say that it has entirely escaped my memory. I say that I cannot now fully recollect the details.

X Q. 215. What do you mean by details?

A. The price per share.

X Q. 210. Have you any idea of what the price was?

Mr. TREADWELL: We object to that. The witness is not bound to answer whether he has any idea or not. I shall advise the witness to decline to answer questions of that character.

(By Mr. STONESIFER:)

X Q. 217. I shall ask for your best recollection as to what he paid for that stock.

A. I decline to answer.

X Q. 218. We insist upon an answer.

185 A. I decline to answer for the reason that I am not able to answer.

Mr. TREADWELL: He has stated that he has no recollection, and that is the end of it.

(By Mr. STONESIFER:)

X Q. 219. I will ask you whether or not these following questions and answers were put to you at a hearing before the board of supervisors of Stanislaus county in June 1896, when the rates were fixed by the board. (Reads:) "Question. Now, I am not asking for the assessments; I am asking for the value of the stock. What is it worth on the books of your company? Answer. Then you want to know the capital of the company don't you? Question. I ask you what the stock is worth at this time, on the books of the company or any other way. Answer. The question is hardly susceptible of an answer, I think, because the stock of the company is not represented on the books of the company, we simply have a capital account which shows the capital of the company made up of assessments paid in on stock and in subsidies received. Question. Well, that is not the real value, is it? Answer. It represents the real cash amount paid in the

treasury. Question. Is that the real value? Answer. It is the real cash amount paid in. Question. My question is, is that the real value? Answer. It depends on what you mean by value. If you mean by 'value' what the thing costs, yes. If you mean by 'value' what it would sell for, no. Question. What is it worth in the market today? Answer. I told you in the beginning that could not be stated; it has no market value; it depends upon the amount anybody would want to pay for it. It is not like some stocks kept daily on the market and having a recognized value; it is simply a question of what somebody is willing to pay and any other party is willing to sell for. Question. Have you had any sales lately? Answer. There have been; I think it was a
186 year ago or maybe more that there was some stock changed hands. Question. For how much? Answer. Of course as secretary of the company I have no knowledge of what the stock did sell for. Question. Have you any knowledge in any other way? Answer. I happen to know, outside of that, that there was some stock sold for four dollars a share. Question. Four dollars a share. Answer. That would not set a standard, of course, for the value of the stock; it might be worth more, and might be worth less. I have known of other stock selling for two dollars a share of this same company since I have been secretary, and have known of other stock selling at $2.50 a share." I will ask you now if you so testified before the board of supervisors of Stanislaus county. What I have read is from the transcript of the testimony certified by the reporter who took the notes. Pages 164, 165 and 166.

A. I remember that there were some questions on these subjects, and that I answered them to the best of my ability, and it is very likely that these questions and answers as there reported are correct, but I cannot verify them from my memory at this time, absolutely.

X Q. 220. Do you say that you so testified at that time?

A. I decline to answer in any other way than as I have already answered it.

X Q. 221. Does this refresh your memory any now?

A. As to those sales?

X Q. 222. Yes.

A. It does not; I do not now recollect what sales I had reference to, if I made such a reply as that.

X Q. 223. Your memory then is a blank as to those questions?

A. No, it is not a blank, but it is not definite enough to enable me to give any further testimony than I have already given you. I have given you all that I am able to.

187 X Q. 224. Do you have any idea at this time, after having heard this testimony read to you, that you so testified?

A. I think it very likely that I did so testify.

X Q. 225. Do you know what sales you referred to here by this testimony?

A. No, I do not; I can't tell now which was which.

X Q. 226. Have you the tax receipts for the taxes of Fresno, Merced and Stanislaus counties on your canal-company property?

A. I have.

X Q. 227. Please produce them.

A. They are already in evidence in those books there. I will say, however, if you will permit me, that the tax bills upon which one instalment only has been paid, were handed to the man who pays the taxes for Miller & Lux shortly before this hearing commenced, asking him to pay the taxes when he pays. The other tax bills are already on file in the vouchers, if you wish me to find them.

X Q. 228. Yes, I would like you to get them.

Mr. TREADWELL: Do you mean all of them?

Mr. STONESIFER: I want them for the year 1896 and for three or four years previous.

X Q. 229. You testified, I believe, that on November 25, 1895 the cost of construction of this canal was $1,055,798.94. You testified that that was what the books showed.

A. I presented a statement, if I remember, of figures showing $1,055,000-odd *dollars*, but I don't remember further than that. I testified that the books showed that up to November 25th, 1895 the construction of the canal had cost $1,055,000 and some odd dollars.

X Q. 230. As to how that construction was made you know nothing about it at all?

Mr. TREADWELL: I will ask counsel to explain what he means.

188 (By Mr. STONESIFER:)

X Q. 231. Do you know how much was spent for labor in that construction?

A. I don't know.

X Q. 232. Do you know how much was spent for materials?

A. I don't know.

X Q. 233. Do you know how much was spent for digging out the earthworks?

A. I don't know.

X Q. 234. Do you know how much was spent for salaries?

A. I don't know; I can ascertain these matters from the books.

X Q. 235. Do the books show that?

A. Yes, sir; those items could be segregated from the books. As they now stand, they don't stand in separate accounts in the books, so each could be shown at a glance, but it could be ascertained.

X Q. 236. That includes Crow's Landing section, extension B?

A. Yes; the accounts were so kept as to enable one who desired, to go through and segregate these items; but they don't stand each one in a separate account, so it can be told at a glance.

X Q. 237. Now we will go back and commence at extension B. What was the cost of construction of extension B? How many miles of canal were constructed in section B?

A. The cost of construction of extension B was $15,924.56.

X Q. 238. That is extension A and B, isn't it?

A. No, sir.

X Q. 239. State what the books show in regard to the cost of extension A.

A. The books show that the cost was $122,777.58.

(By Mr. FULKERTH:)

X Q. 240. How many miles, Mr. Merritt?

189 A. 29 miles.

(By Mr. STONESIFER:)

X Q. 241. When was that extension built? Or, rather, I will ask you when was extension A built?

A. I gave the date of completion. Do you wish to know the first item on the account?

X Q. 242. When extension B was completed.

A. The last charge in extension B account was dated December 20th, 1881.

X Q. 243. Extension B was completed in September?

A. That is the last charge in the account?

X Q. 244. When was extension A completed?

A. The last charge in that account, dated May 18, 1881, evidently does not represent the date of completion. The charges in that account run along pretty regularly month by month, to March 27th, 1880, although the charges for the latter part of the time are very small charges and are evidently some small finishing-up items; probably some outstanding labor checks. It would not be possible to determine the exact date of completion from the account.

X Q. 245. Just give us the month and year.

A. That is as near as I can come to it. The date of completion, as shown by the minutes of the company, of extension A was September, 1878.

X Q. 246. That is when it was completed, is it?

A. That is when the president reported to the board of trustees that the work had been completed.

X Q. 247. Now, when was it commenced, when was construction commenced on section A?

A. The first charge in the account against construction A——

X Q. 248. (Interrupting.) Can you tell us about the time?

A. No, that is all I can tell you, what the dates of the charges are.

190 X Q. 249. What do the minutes of the books show? Can you look at the minutes of the company and see when the record ordered the work to be done? Would not the minutes show?

A. The minutes don't show when it was begun, no.

X Q. 250. What I want to get at is the time when it was commenced and ended; that is, the period of construction of each one of those sections. Extension A is from Los Banos to Orestimba, is it?

A. Extension A is from Los Banos to Orestimba.

X Q. 251. And this outside canal is from the head works to Los Banos?

A. Yes sir.

X Q. 252. In other words extension A commences where the outside canal ends, that is, making an allowance for the difference in the fall between them?

A. Well, extension A begins at Los Banos creek, and outside canal ends at Los Banos creek, but at different points on Los Banos creek.

X Q. 253. It is higher up on the creek?

A. It is higher up on the creek.

X Q. 254. That is all the difference, is it?

A. Yes, that is the difference between them.

X Q. 255. Do you know the distance there?

A. No, not exactly.

X Q. 256. You don't know approximately, do you?

A. No, I never have measured it on the map. I have seen the map of it, of course, but I never have taken note of the distance. I find in the minutes that reference is made to the project of extending the canal in 1874, and it would appear that they must have begun work upon it, but that it was abandoned later, as appears on page 115, volume 1 of the minutes, the record showing that
191 the president suggested that a petition be received and placed on file, and that a letter be written to the committee stating that it was the intention of the company to have extended the work this year, but on account of the action of the Grangers in publishing broadcast their resolutions of disapproval, it was found that the capitalists were not willing to invest their funds in an enterprise which seemed to receive so much opposition from the people, which suggestion on motion of Mr. Chapman was adopted. That was at the meeting of June 13th, 1874. The next reference to extension A is on page 195 contained in the minutes of the trustees' meeting of September 28th, 1876 where it is recorded that Mr. Moss reported that Mr. H. D. Gates had been sent up to the valley to make a careful estimate of the cost of extending the canal to Orestimba creek, using the Wauchope & Slusser machine for the earthwork. The report of Mr. Gates was read. Mr. B. S. Kaufman, superintendent, was called in, and the matter was discussed at length. The question on page 206 at a meeting held——

X Q. 257. (Interrupting.) We don't need that. If we can get the date about when it commenced, that is what we want.

A. Well, I am trying to get it from the record as well as I can. You wanted to know what the minutes stated. I am telling you what we find in the minutes.

X Q. 258. Give us as near as you can from the other books the date when it commenced, the date when extension A commenced, A and B, both, I want.

A. I believe I testified about B didn't I?

X Q. 259. No, you testified when it ended.

A. The books show the first charge against extension A on April 24, 1874. They run along each month to October; then there was nothing more until September, 1876.

X Q. 260. I guess construction was commenced in 1876.

A. Probably these other charges may have been surveys,
192 and such work as that, preliminary work. There had been a good deal done in the way of surveying the right of way

before construction actually began, and they were all charged to the account.

X Q. 261. The work of construction I don't think commenced until 1876 or 1877 because it was completed in 1878. It would not have taken two years to have done the work.

A. I find in the record, February 23rd, 1877, page 206, reading from the minutes of the meeting February 23rd, 1877, in Book 1 of the minutes of the corporation, I find this resolution: "Resolved that the canal be extended to Orestimba creek during the present year, and that the superintendent be given the necessary authorization to commence work thereon immediately; also that Mr. C. H. Barrett, recently engaged as engineer, be instructed to examine the estimates heretofore made of the cost of the work, and to submit his own thereon."

X Q. 262. Who were present of the board there, the president and directors?

A. Mr. Friedlander, vice-president, presided at this meeting. The record shows that there were present Messrs. Friedlander, Walker, Baum, Northam, Chapman, absent—Messrs. Moss and Bensley and Mora. Moss was undoubtedly president at that time.

X Q. 263. Then that resolution was made before Miller & Lux had acquired any interest in the canal, evidently?

A. I don't understand your question.

X Q. 264. I say that resolution was passed at the time when Miller & Lux did not have any interest in the canal.

A. There never was such a time.

X Q. 265. What I mean is a controlling interest.

A. Oh, it was before they had acquired the stock which gave them the controlling interest.

X Q. 266. They didn't have any control over the company at that time?

193 A. Except as any stockholder has his share of control.

X Q. 267. Do your books show the interest that Mr. Miller had at that time, or Mr. Lux?

A. They owned 8,500 shares at that time, according to Miller & Lux' account in the stock ledger. I am not aware whether there was any stock belonging to them standing in their names or not.

Further hearing adjourned to Friday, April 14th, 1899, at 10 a. m.

194 FRIDAY, *April* 14, 1899—10 a. m.

Counsel appearing: For complainant, W. B. Treadwell, Esq. For respondents, L. W. Fulkerth, Esq. and C. A. Stonesifer, Esq.

Examination-in-chief of HORACE WANZER, a witness called on behalf of complainant, sworn.

By Mr. TREADWELL:

Q. 1. What is your full name?

A. Horace Wanzer.

Q. 2. What is your age, Mr. Wanzer?
A. 54.
Q. 3. Where do you reside?
A. In Merced county, the town of Los Banos.
Q. 4. What is your business?
A. Engineer and surveyor.
Q. 5. How long have you been engaged in the practice of that profession?
A. 21 or 22 years.
Q. 6. *Have you at any time been in the employ of the San* Joaquin & Kings River Canal and Irrigation Company? Have you done any work for that company?
A. I have done lots of work for them, yes sir.
Q. 7. What work have you been engaged in for that canal company?
A. In measuring their lands and finding out the amount irrigated.
Q. 8. What else?
195–197 A. Measuring water, making canals for them, branch canals, all work of that kind, everything pertaining to water.
Q. 9. How far back has that employment for that company extended? About when was the first work you did for them?
A. In September, 1890.
Q. 10. You have been working for them at various times up to the present time, have you?
A. For the canal company, yes sir.
Q. 11. And are still doing so?
A. Yes sir.

* * * * * * *

198–218 X Q. 25. Well, the number of acres below the canal?
A. Including Miller & Lux and all of the settlers, there is about 310,000 or 315,000 acres of the land under the canal, below the canal. This is the amount of land of all the owners, Miller & Lux and all the others included.

(By Mr. FULKERTH:)

X Q. 26. That is from the head works to Newman?
A. Yes sir.

(By Mr. STONESIFER:)

X Q. 27. About how much of that does Miller & Lux own, Miller & Lux, and Miller?
A. I have never figured it up; I could not tell. They own the largest portion of it surely. I have never had occasion to figure up the number of acres that they do own.
X Q. 28. Give us approximately.
A. It would necessarily be a very rough estimate. I know the country thoroughly well. There is 300,000 acres, say there is 200,000 that belongs to them.

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219–366 WEDNESDAY, *May* 24, 1899.

Counsel appearing: For the complainant, W. B. Treadwell, Esq. For the respondents, C. A. Stonesifer, Esq., and L. W. Fulkerth, Esq.

It is hereby stipulated between the parties that the remaining testimony in this case shall be taken down in shorthand by Clement Bennett, a competent stenographer, and by him put into typewriting, and that the signatures of the witnesses are waived.

* * * * * * *

367 & 368 MONDAY, *June* 5, 1899.

Counsel appearing: For the complainant, W. B. Treadwell, Esq. For the respondents, C. A: Stonesifer, Esq.

C. Z. MERRITT recalled.

Direct examination resumed:

* * * * * * *

369 Q. 9. Since your last examination, have you prepared a statement of receipts by the company from irrigation at and since the time of the fixing of these rates by the supervisors of Stanislaus county?

A. I have.

Q. 10. Please produce it.

A. The statement shows the receipts——

Q. 11. (Interrupting.) Just get the statement first, and have it before you, and state what that statement shows.

A. This is a statement of irrigation by the San Joaquin and Kings River Canal and Irrigation Company for three years ending November 25, 1898. That, of course, does not mean that the statement shows irrigation which took place during the latter part of the year 1898, because that was not then a matter of record on the company's books. It shows everything that was a matter of record on the books of account at my office up to November 25, 1898, which is the end of our fiscal year.

Q. 12. That shows the receipts from irrigation?

A. It shows receipts from irrigation, but the heading of the account is "Statement of irrigation," and I do not wish it to be misleading in that respect.

Q. 13. In the first place, you say it is a statement. From where did you get the items contained in that statement?

A. From the press copies of the superintendent's journal.

370 Q. 14. Turning now to any page of that statement, explain the meaning of the columns in which those items are contained.

A. This is page 30, which shows in part the irrigation in the Las Garzas section—this is spelled "Los Garzos;" it should be "Las Garzas"—for the irrigation year ending June 30, 1897.

Q. 15. What does the first column indicate?

A. The first column is headed "Alfalfa"——

Q. 16. (Interrupting.) No, the first column, not the headings.

A. The first column contains the names of the irrigators.

Q. 17. The names of the customers who used the company's water?

A. Yes, sir.

Q. 18. What is the next column?

A. The next column contains the number of acres of alfalfa irrigated by each of the irrigators named, at the rate of $2 per acre per annum.

Q. 19. Now, go on with each column in that way.

A. The second column shows the number of acres of alfalfa irrigated by the respective irrigators in Stanislaus county at $1.50 per acre per annum. The third column shows the number of acres of alfalfa irrigated by each irrigator outside of Stanislaus county, at $1.50 per acre. The fourth column shows the number of acres of alfalfa outside of Stanislaus county at $1.25 per acre. The fifth column shows the number of acres of grain at $1.50 per acre.

Q. 20. Including Stanislaus county, or not?

A. Exclusive of Stanislaus county.

Q. 21. Be careful in your statement, so that we will know just what those columns mean.

371 A. The sixth column shows the number of acres of vineyard and orchard outside of Stanislaus county irrigated, at $2.50 per acre. The seventh column shows the number of acres of garden outside of Stanislaus county irrigated at $5 per acre. The eighth column shows the number of acres of corn, if any, irrigated outside of Stanislaus county, at $2 per acre.

Q. 22. I suppose these columns are all alike?

A. No sir, the columns do not run alike.

Q. 23. I am not familiar enough with it to know. Just turn to any page which contains any column not contained on page 30.

A. That would be difficult to do, because it may happen on many other pages. There was no attempt made to have them uniform.

Q. 24. Yes, but all we want is, you have used abbreviations in the headings, and we simply want to have an explanation of the headings—that is all. So where you find any abbreviations not enumerated on page 30, just explain them.

A. I had better explain the abbreviations used, then.

Q. 25. Yes. I want all the abbreviations that are in there that you have not already explained.

A. On page 1, the column headed "Sun." means "sundries;" that is, irrigation of crops other than those specified at the head of other columns on that page. Of course, the rates are self-explanatory here. They vary in different places. It is only the abbreviations that you want?

Q. 26. Yes, it is only the abbreviations.

A. On page 11 in the fourth column, the abbreviation
372 "or." indicates "orchard." In some cases "orchard" and "vineyard" are indicated by the initials "O" and "V."

Q. 27. Or "V" and "O"?

A. Or "V" and "O." In some cases, as on page 13, crops other than those indicated in the headings of the columns, were charged for by placing the acreage in columns, taking the same rate, as for

example in the second column, which is headed "Grain $2," will be found in the fourth item the numeral "9," and after it the word "spuds."

Q. 28. Which means?

A. Which means "potatoes." Similarly in other columns, corn is classed with grain, and beans is specified in the column headed "Sundries."

Q. 29. It is not necessary to give other instances. That is a sufficient explanation of that.

A. That explains these variations from the rule.

Mr. STONESIFER:

Q. Let me ask you a question right there, so we can understand it as we go along. You say "Sun." is "Sundries"?

A. Yes sir.

Q. What is the price for "Sundries"?

A. The book-keeper headed the column "Sundries" for such crops as were not separately specified at the heads of columns.

Q. At the head of the column there is no price headed under "Sundries"?

Mr. TREADWELL: The reason for that is, there are various prices and they are specified always.

A. Also in column two, the initials "S. G."

373 Q. 30. What page?

A. The same page. The initials "S. G." are intended to indicate "salt grass." I will say that the book-keeper's work was not satisfactory in the segregation of this year's irrigation, especially in this section, and I sent it back to him to resegregate. He sent me the result of his work, which has been reproduced on page 15 under the heading of "Summary of Los Banos section." This gives a correct segregation which corresponds in total with the number of acres shown in the statement preceding. A similar segregation follows the statement for each section in the year 1896. On page 21 are several columns headed "C. B. & P." followed by the rate applied in each case.

Q. 31. Which means?

A. "C. B. & P." are intended to indicate "corn, beans and potatoes." On page 33 are columns headed "B. & P." which indicates "beans and potatoes." On page 34 are columns headed "Po.," indicating "potatoes." On page 35 are columns headed "Pot.," indicating "potatoes." On page 59, one column is headed "Fall crop $1."

Q. 32. What does that indicate?

A. "Late potatoes," and sometimes corn or other crops which are grown after the cereals for the year have been harvested. The company makes a rate for such crops, and calls them "fall crops." They are so specified on their regular schedules. The abbreviation used for Stanislaus county on page 30 is "St. Co." Elsewhere the abbreviation "Stan." is sometimes used to indicate Stanislaus

374 county. So far as I can see, this covers the ground with regard to abbreviations.

Q. 33. On page 23, at the end of the irrigation for 1896, and on similar pages following the other two years we find: "Summary for irrigation account." What does that mean?

A. I have here gathered upon one page the totals shown upon previous pages, section by section for that year; for example——

Q. 34. That is sufficient. That explains itself. Those are the totals from the preceding pages under the head of sections?

A. They are, yes. The first seven lines are totals from preceding pages.

Q. 35. Then follows the heading "Deductions." What does that mean?

A. I have gone through the irrigation account for that year, and shown here under this heading "Deductions," all charges to the account made by the superintendent for corrections of original charges. For example: The first line under "Deductions" reads, "Middleton a/c chg. 5 ac. gr. @ $2, 10."

Q. 36. Read that item.

A. This means that Mr. Middleton was overcharged on five acres of grain.

Q. 37. You mean overcharged for five acres of grain?

A. For five acres of grain at $2, which entitled him to a credit of $10, which he here received, and irrigation account received the corresponding debit.

Q. 38. And the other items are of a similar character?

A. They are. After the first three items which show cor-
375 rections in charges for the year 1896, follow other items which are charged to irrigation account, which do not involve a reduction of the acreage irrigated that year. The first item is a reduction in the bill of O. E. Smith on 80 acres of grain which was charged to him, as I remember it now, at $2.50 per acre, which was reduced to $2 per acre.

Q. 39. Making a reduction of 50 cents per acre?

A. Making a reduction of 50 cents per acre, which is here shown. That did not involve a reduction of acreage, and therefore does not appear among such items. The items following the Smith item are for corrections of various sorts affecting the irrigation for the year 1894–'5.

Q. 40. But which were made in 1896, you mean?

A. Yes sir, and as they did not involve a reduction of the acreage irrigated in 1896, they are separately classed.

Q. 41. Then on page 24 and similar pages following each year, we have a page headed "Recapitulation." What does that page show?

A. Upon this page I have grouped the acreages of various crops and various rates so as to show the total acreage of any particular crop at any given rate, and the amount of revenue produced upon the irrigation of those acres.

Q. 42. All being taken from the preceding pages as before?

A. Yes sir.

Q. 43. Now, on page 46, following the pages of "Summary" and "Recapitulation" for 1897, and then a similar page for the year 1898, we have "Statement of amounts which would have been pro-

duced by irrigation for the year ending November 25, 1897,—
376 (1) on basis of rate fixed by Stanislaus county, and (2) on basis of regular rate." Perhaps that heading explains itself, but you can explain a little further how that page was arrived at.

A. I have here taken the acreage actually irrigated and classified as in the preceding statement on page 45, which was a recapitulation of the irrigation account for the year ending November 25, 1897, and to the acreage of each crop at each separate rate, I have applied, first, the rate fixed by Stanislaus county——

Q. 44. That is by the board of supervisors of Stanislaus county?

A. Yes sir, by the board of supervisors of Stanislaus county, so as to show what would have been produced to the company in revenue upon that irrigation had the rate fixed by the board of supervisors of Stanislaus county been applied to all the irrigation of the company, that is, for that year.

Q. 45. That is the column headed "At Stanislaus County rate," is it?

A. It is.

Q. 46. The next column "At regular rate," what does that mean?

A. In that column I have applied to the various classes of irrigation the regular rates fixed by the board of trustees of this company prior to the action of the board of supervisors of Stanislaus county in reducing the company's rates, and have shown what would have been produced to the company in revenue on the acreage irrigated, had those rates prevailed.

Q. 47. This statement as a whole, was it prepared by your-
377 self? that is, under your immediate direction?

A. It was.

Q. 48. Is it correctly prepared?

A. It is.

Q. 49. Are all of the computations and footings contained in it correct?

A. They are.

Q. 50. And it correctly represents the items as shown by the books of the company?

A. Yes sir.

Mr. TREADWELL: We offer that statement in evidence, and ask that it be marked "Complainant's Exhibit 11."

Mr. STONESIFER: We object to it on the ground that it is incompetent, irrelevant and immaterial, and not the proper evidence of the matters therein contained, or pretended to be contained therein.

(Marked "Complainant's Exhibit 11.")

Mr. TREADWELL: That exhibit will not need to be copied into the book of exhibits. You have a copy of it already, Mr. Stonesifer.

Q. 51. It is in testimony here, Mr. Merritt, that there is a section of the canal known as "Camp 13 section." In looking through this statement, I have not observed any charges there for Camp 13 section. Can you explain that?

A. It is because all the irrigation within that section is charged to Miller & Lux.

Q. 52. I observe in that connection that the quantity of irrigation of Miller & Lux in this statement is contained in a separate
378 place in each year?

A. Yes sir.

Q. 53. How does that happen? What is the practice with regard to the irrigation of Miller & Lux?

A. The irrigation by Miller & Lux is not classified according to sections, but according to the ranches owned by Miller & Lux where the irrigation takes place. Each superintendent of Miller & Lux has to approve the bills for irrigation from his ranch, and there is no object in segregating the irrigation bills according to sections, while there is an advantage in segregating them according to the ranches, for the reason that I have stated. Therefore, sections are ignored in making those bills.

Q. 54. So that the irrigation in the Camp 13 section does appear in that statement?

A. It does.

Q. 55. It appears from this statement that various rates are charged for apparently the same kind of irrigation. Can you explain how that occurs?

A. In the case of alfalfa, for example, special rates are made for new alfalfa.

Q. 56. That is, you mean alfalfa just planted?

A. I mean alfalfa just planted. The rate for such alfalfa varies somewhat, according to the circumstances in each case, the superintendent having regard to the return that the irrigator will receive for the irrigation. When the circumstances are such that his return will be very small, or almost nothing the first year, he re-
379 ceives a corresponding rate,—that is to say, he receives the lowest rate that the superintendent feels justified in making, and when the circumstances warrant the making of a higher rate for the first year's irrigation, he does so. But it has always been the custom, or at least has long been the custom, and I think always, to make special rates for alfalfa just sown.

Q. 57. Are there any other cases of special rates?

A. There are other cases of special rates for grain; where the circumstances would not justify an irrigator in paying the regular rates and there is an abundance of water in the canal, the superintendent is allowed to use his discretion in making a special rate according to the circumstances in the given case.

Q. 58. When you say "an abundance of water in the canal," you mean sufficient water in the canal to supply every demand?

A. To supply every demand, and leave a surplus which would be unproductive to the company if the superintendent did not exercise his judgment in making a special rate. It is to induce men who are so situated that they could not derive as much benefit from irrigation as the average farmer can, to produce a crop yielding some revenue to him and some to the company.

Q. 59. I also observe in this statement what appears to be a special rate in the case of the Dos Palos colony. Will you explain that?

A. The settlers in the Dos Palos colony have sometimes received special rates as an encouragement to them to purchase their land and put in crops, and the company has deemed it wise, in order to extend the area of irrigated lands in that vicinity, which
380–394 is near the headworks and which can be supplied at a less cost to the company than any other portion of the territory irrigated by the canal, to make such special rates until the farmers have become established so as to be able to pay regular rates.

* * * * * * *

395 Q. 134. I show you a paper endorsed "187. Petition of sixty-five farmers for the extension of the canal. Received by the board at meeting of June 13, 1874, and ordered placed on file." I ask if that is one of the records of the company?

A. It is.

Mr. TREADWELL: We offer that in evidence, and ask that it be marked "Complainant's Exhibit 18."

Mr. STONESIFER: We object to that as irrelevant, immaterial and incompetent, and not within any of the issues in this case.

(Marked "Complainant's Exhibit 18.")

Mr. TREADWELL:

Q. 135. I also show you a paper dated Los Banos, August 4, 1875, addressed to J. L. Palmer, secretary of the company, and signed "Adolph Widman," and I ask you if that is one of the records of the company?

396 A. (After examining paper.) It is.

Mr. TREADWELL: We offer that in evidence, and ask that it be marked "Complainant's Exhibit 19."

Mr. STONESIFER: We object to that as irrelevant, immaterial and incompetent, not within any of the issues in this case, and not shown to have been signed by the man who purports to have signed it, and as hearsay.

Mr. TREADWELL: If you make that objection, it will put us to a good deal of trouble, perhaps, but I shall have to prove the signature. If you insist upon that, we will produce that proof hereafter.

The WITNESS: I am familiar with the signature.

Mr. TREADWELL:

Q. 136. I will ask you now if that is Mr. Widman's signature, Mr. Merritt?

A. (After examining paper.) I recognize it as his signature.

(Marked "Complainant's Exhibit 19.")

Q. 137. I now show you a paper endorsed, "Letter from Jules Kahn to I. Friedlander, urging extension of the canal. Dated May 13, 1874." Is that one of the records of the company?

A. Yes sir, it is.

Q. 138. Do you know the signature of Mr. Kahn?

A. Yes sir, I do.
Q. 139. Is that the signature of Mr. Kahn?
A. (After examining paper.) It is.

Mr. TREADWELL: We offer that in evidence, and ask that it be marked "Complainant's Exhibit 20."
Mr. STONESIFER: The same objection.
(Marked "Complainant's Exhibit 20.")

397 Mr. TREADWELL: I now show you a paper endorsed, "Letter from Samuel Hinckley, asking what inducements could be offered to secure the extension of the canal to Durham's ferry. Dated May 4, 1874." Is that one of the records of the company?
A. It is.
Q. 140. Do you know the signature?
A. I do not.

Mr. TREADWELL: I will produce proof of the signature hereafter, if that objection is made.
Mr. STONESIFER: The same objection.
Mr. TREADWELL: We offer it in evidence, and ask that it be marked "Complainant's Exhibit 21." You require proof of the signature, do you?
Mr. STONESIFER: Yes.
(Marked "Complainant's Exhibit 21.")

(A recess was here taken until 2 o'clock p. m.)

398 *Afternoon Session.*

C. Z. MERRITT.

Direct examination resumed.

Mr. TREADWELL:

Q. 141. I show you a contract between the San Joaquin & Kings River Canal & Irrigation Company and Miller & Lux, dated December 24, 1897 (handing). Is that one of the records of the company?
A. It is.
Q. 142. Do you know the signatures and seals?
A. I do.
Q. 143. Are those the seals of the two companies named?
A. They are.

Mr. TREADWELL: We offer that in evidence, and ask that it be marked "Complainant's Exhibit 22."
(Marked "Complainant's Exhibit 22.")

Q. 144. What are the three books that you now produce?
A. The cash book, journal, and ledger of the superintendent's office of the San Joaquin & Kings River Canal & Irrigation Company.
Q. 145. Which have been returned to the secretary's office?
A. Which have been returned to the secretary's office.

Q. 146. And are now a part of the records of that office?
A. They are.

Mr. TREADWELL: We offer these books in evidence, in connection with the books and accounts heretofore offered, and will add them to the inventory.

399 The WITNESS: Do you wish the dates covered?

Mr. TREADWELL: They show for themselves.

Mr. STONESIFER: I object to the books on the ground that they are not competent to show, and do not show, that they are records kept by the secretary of the company, and that they are irrelevant, immaterial and incompetent. I make the further objection that we object to their being in unless they are marked as exhibits so that they may be identified.

Cross-examination.

Mr. STONESIFER:

X Q. 1. What was the assessment of the property of this company in 1896, Mr. Merritt?

Mr. TREADWELL: I object to the question, in the first place, because it is immaterial and irrelevant, and in the next place, the records are the best evidence.

A. The assessed value of the company's property in Stanislaus county, according to the bill dated November 19, 1896, was $28,750. You want the other counties also, I suppose?

Mr. STONESIFER:

X Q. 2. Yes. What was that on? What property did that embrace?

A. Do you wish me to read the whole description?

X Q. 3. You can state from the receipt.

Mr. TREADWELL: State it shortly.

A. On the canal and telephone line.

Mr. STONESIFER:

X Q. 4. That is all?

A. Yes sir.

X Q. 5. Does it say how many miles of canal?

400 A. Yes sir, 11½ miles.

X Q. 6. Are they assessed separately?

A. 7½ miles of telephone line.

X Q. 7. Give me the assessment on the canal separately from the telephone. 11½ miles of canal at how much a mile?

A. It is not specified. They do not show the rate per mile. They describe the strip of land embraced within the right of way in passing through certain legal subdivisions, and then say, making a total of 11½ miles of canal. Under that they say, 7½ miles of telephone line, $400. Then they have written under that, "9½ miles of above-described canal, $23,750; 2 miles of described canal, $5000."

X Q. 8. The total on the 11½ miles is how much?

A. On the 11½ miles, it would be $28,750. I do not know whether that is intended to include the $400 or not.

Mr. TREADWELL: They make out those bills in a very blind shape. I have tried to study some of those things. That includes the $400, obviously.

A. That is on a different line, you see. It is not carried out on that same line. That is stated on the upper line.

Mr. TREADWELL: The total valuation is $29,150; so he is right in saying that $28,750 does not include the $400. That is separate.

Mr. STONESIFER:

X Q. 9. Now, then, in Merced county in the same year?

A. I find that the bill is not in its place in the file. I withdrew it in order to answer a similar question at a previous hearing,
401 and supposed it had been returned. Evidently it has not, and I shall have to find it at the office.

X Q. 10. Can you go on with the tax receipts in Stanislaus county for two or three years back of 1896? Have you the receipts, say for three or four years previous to 1896?

A. Do you wish any other counties than Stanislaus?

X Q. 11. Yes; I asked you about Merced.

A. I did not know whether you wished them put together.

X Q. 12. Yes, I do.

A. I want to know whether you wish me to read now any other than Stanislaus, or to wait until I find the missing bills before I read the assessments for other counties. The reason I ask is, because I find the statement from Madera county.

X Q. 13. I want them all. This is for 1896?

A. No sir.

X Q. 14. I want the year 1896 now. We are on that. We do not want to mix other counties now.

A. I do not find the bill for 1896. I am going back at your request. I can give you the assessed valuations.

Mr. TREADWELL: Would it not be better now, Mr. Merritt, since you have started on Stanislaus, to run back as far as Mr. Stonesifer wants you to run it back, and then take up another county?

The WITNESS: If you want it by counties, Mr. Stonesifer, you can have it that way. I supposed you wanted it by years.

Mr. TREADWELL: If you take it by counties, it would be more intelligible.

A. Stanislaus county, for the year 1894–'5——

Mr. TREADWELL: Just give the items as you did the last time, and it will be more intelligible.

A. 11½ miles of ditch. The rate per mile is not stated. The total is assessed at $25,000. 7½ miles of telegraph line, $400. Improvements, $500. Total assessment, $25,900.

402 Mr. STONESIFER:

X Q. 15. That was all the property, was it, Mr. Merritt, assessed to the company in Stanislaus county?

A. Yes sir.

X Q. 16. That answer will apply also to the previous assessment of 1896?

A. Yes sir. The tax bill for Stanislaus county for the year 1893–'4 shows the assessed value of the company's property in that county as follows: 1–½ miles of ditch, $25,000; 7½ miles of telegraph line, $450; improvements, $500; total, $25,950.

Mr. TREADWELL: Those two years are substantially alike. Do you want to go further back than that?

Mr. STONESIFER: No. I think that is as far back as I care to go. What is it for 1897–'8? Have you got that there?

A. That is one of the bills that was withdrawn and has not been returned to the files, as explained by me in my previous answer. I thought that these assessments were things that you were going into with me in the office.

Mr. TREADWELL: The probability is that you separated them out for that purpose. I think you had better get them, Mr. Merritt.

Mr. STONESIFER: Yes, then we will be done with this subject.

The WITNESS: Very well, then I will go to the office and get them. (After returning) I have made a thorough search in the office for them, and I cannot find them. I will look further for them here.

403 Mr. TREADWELL: You had better search through the bundles. You must have put them in the wrong place in your hurry.

The WITNESS (after searching): You want these put in by counties, I believe, Mr. Stonesifer?

Mr. STONESIFER:

X Q. 17. Yes, give it to me for 1897–'8.

A. Stanislaus county for the year 1897–'8, assesses on 11½ miles of canal, $28,750, and improvements, $400—no, that is not improvements, that is telephone line; total, $24,750.

X Q. 18. How is that?

A. That is what it is, after deduction. The assessment on the face of it reads $28,775, as I have stated. There was a deduction by the board of equalization, so that the valuation of all property after deduction was $24,775.

X Q. 19. And the telephone was how much?

A. $400.

X Q. 20. And improvements how much?

A. As originally assessed, the bill was for $28,750 on 11½ miles of ditch, and $400 on telephone line. The value of all property after deduction is stated at $24,775.

X Q. 21. The board of equalization, then, reduced that to how much?

A. $24,775.

X Q. 22. That is for 1897–'8. Now, then, what is it for 1898–'9?

A. 11½ miles of canal, $28,750, and personal property, which is the telephone line, $250.

Mr. TREADWELL: That completes Stanislaus county.

Mr. STONESIFER:

X Q. 23. We will now take up Merced county.

404 A. Beginning with what year?

X Q. 24. Commencing with 1894, and running straight through to 1898.

Mr. TREADWELL: With 1894–'5, the same as we commenced with Stanislaus county?

Mr. STONESIFER: We commenced back of 1894–'5 with Stanislaus county; we commenced with 1893–'4.

The WITNESS: I think 1894–'5 has not been put in for Stanislaus county.

Mr. TREADWELL: I thought it was. Maybe that is one you did not find.

The WITNESS: It was one of those I did not find. 1894–'5 for Stanislaus county, the assessment was $25,000 for 11½ miles of canal, and $500 for improvements, and $400 for telephone line, a total of $25,900. This, however, was reduced by the State board of equalization so that the reduced valuation was $23,310. You wish to begin with Merced county for the fiscal year 1893–'4?

Mr. STONESIFER:

X Q. 25. Yes. That is where we commenced with Stanislaus county, is it not?

A. I believe it is, yes. Merced county assessment for the fiscal year 1893–'4, 38 miles of irrigation canal at $2000 per mile, $76,000; 38 miles of telephone line, $1138. Total, $77,138. For the fiscal year 1894–'5, Merced county, personal property $446; solvent credits, money on hand, $162; 38 miles irrigation canal, right of way, and all the improvements, at $2000 per mile, $76,000; telephone line at $30: carried out, $77,139 for the canal and telephone

405 line. For 1895–'6, Merced county, 38 miles of irrigating canal, at $2000 per mile, $76,000; 38 miles telephone line, at $30 per mile, $1139.

Mr. TREADWELL: That does not figure.

A. That is the way they figure it here. I have got a query mark after it, but we will let it pass at that. That is what they have put. Furniture, safe, machinery, etc., $559; solvent credits, $2000. For 1896–'7, Merced county: personal property, furniture, wagons, etc., $519; solvent credits, $2000; 38 miles of irrigating canal at $2000, $76,000; 38 miles of telephone line at $30, $1139; 3 miles of branch canal at $1000 per mile, $3000. For 1897–'8, Merced county, 38 miles irrigation canal at $2000, $76,000; 38 miles telephone line, etc., at $30 per mile, $1139; 3 miles branch canal at $1000, $3000. For 1898–'9, Merced county, 38 miles of irrigation canal, at $2000, $76,000; 38 miles telephone line at $30 per mile, $1139; 3 miles of branch canal at $1000 per mile, $3000; 15½ miles of irrigation canal, being the outside canal, at $1000, $15,500; personal property $519; solvent credits, $2000. That shows the three miles assessed previously was the Dos Palos canal.

Mr. STONESIFER:

X Q. 26. The next county is Madera county, is it not?

A. No sir. Fresno. Madera county we have only two bills anywhere from, I think, and those are very small items for a little corner of land over there, and most of the years they have not assessed it at all.

X Q. 27. Then there is no canal there?

406 Mr. TREADWELL: There is no canal there.

A. There is none of the canal there; it is only for some land.

Mr. STONESIFER:

X Q. 28. After all, the assessment in Madera county is for a little corner of land that the company owns?

A. Yes sir.

X Q. 29. I do not care about that. Now for 1893–'4, Fresno county.

A. The assessments for Fresno county are as follows: For the fiscal year 1893–'4, on real estate, $15,601; on 20 miles of canal with headworks, etc., $40,000.

X Q. 30. That was all the property for 1893–'4, was it?

A. Yes sir.

X Q. 31. For the fiscal year 1894–'5, real estate, $10,968; canal, $40,000. Assessments for the canal are for everything pertaining thereto, and the telephone line is included as appurtenant to the canal. For the fiscal year 1895–'6, real estate, $11,693; canal, etc., $40,000. In this bill the telephone line is specified as included in that assessment. For the year 1896–'7, real estate, $11,191; canal, etc., $40,000.

X Q. 32. Does it say how much canal?

A. 20 miles. For the year 1897–'8, real estate, $11,900; 20 miles of main canal, about 10 miles of parallel canal having one bank in common with the above, and being about one-half the size of the main canal, also about 11 miles of branch ditches, and also telephone line, old iron wire, about 20 miles in length—value of
407 all, $50,000. For the year 1898–'9, real estate, $11,683. A certain canal or irrigating ditch, being about 20 miles in length, together with franchise, headgates, and everything appurtenant thereto, and said canal being about 72 feet wide on the surface, 30 feet wide on the bottom, and 7 feet deep from top of banks, also about 10 miles of parallel canal having one bank in common with the above and being about one-half the size of the main canal, also about 11 miles of branch ditches, and 20 miles of telephone line—total, $50,000. Also a certain canal and irrigating ditch, beginning at a point on the old canal—I do not know whether I need to read this description, do I? It is the outside canal.

X Q. 33. Just read what it is.

A. It is the outside canal, valued at $9500, making a total of $71,183.

X Q. 34. I understood you to say before that Mr. Miller gave in the assessments; that he attended to that.

A. Yes sir, I understand that he does. I know that I do not, and I suppose that he does.

X Q. 35. This covers all the assessments of the company, does it not?

A. Practically.

Mr. TREADWELL: You mean during that period.

Mr. STONESIFER: During that period, yes, from 1893-'4 to 1898-'9.

A. All but the assessment of Madera county that I spoke of, for perhaps two years, on a small piece of land. Then there is the franchise tax in San Francisco.

X Q. 36. How much is that?

408 A. $1.50 a year, or something like that; $1.50 or $2 a year.

X Q. 37. That has been the assessment during that period?

A. It is the franchise tax that they levy on all corporations doing business in San Francisco.

X Q. 38. During that period that franchise tax has been $1.50 or $2 per annum?

A. I think that was it. If you wish to know exactly, I will look it up.

X Q. 39. That is near enough.

A. It is a trifling affair. It is simply levied, not on the value of the property at all, but on the franchise of the company, that is, so called. I do not know whether that is the proper name for it or not.

X Q. 40. What I meant was, as far as the canal was concerned. You have given that all in?

A. Yes sir. So far as the canal was concerned, it has all been given in.

X Q. 41. And with the branches?

A. And with the branches.

X Q. 42. And all the property connected with it?

A. Yes sir.

(By consent of counsel, an adjournment was here taken until to-morrow, Tuesday, June 6, 1899, at 10 o'clock a. m.)

409 TUESDAY, *June* 6, 1899.

Counsel appearing: For the complainant, W. B. Treadwell, Esq. For the respondents, C. A. Stonesifer, Esq.

C. E. GRUNSKY, called for the complainant, sworn.

Mr. TREADWELL:

Q. 1. What is your full name?

A. Carl Ewald Grunsky.

Q. 2. What is your age?

A. 44.

Q. 3. Where do you reside?

A. In San Francisco.

Q. 4. What is your business?

A. Civil engineer.

Q. 5. How long have you been engaged in the practice of that profession?

A. Since 1878.

Q. 6. How long in the State of California?

A. All the time in the State of California.

Q. 7. What experience have you had in the examination of watercourses and canals?

A. In 1878 I entered the employ of the State engineers' department of this State, and was assistant in that department and chief assistant until 1887. During that time I was for some years in charge of irrigation investigations in the San Joaquin valley,
410 and had occasion at that time to make repeated measurements of the flow of rivers and canals in various parts of the central valley.

Q. 8. And since leaving the State engineers' department?

A. Since leaving the State engineers' department, I have been in the general engineering practice, particularly in the matter of irrigation, land reclamations, water supply, and have had more or less to do with canal work during all of that time.

Q. 9. Have you ever made any special examinations and measurements with the view to determining the loss of water from canals?

A. Yes sir, I have made some such measurements. I made some in 1882, at the time I was assistant State engineer. I examined the canals that bring water into the vicinity of Fresno, and made measurements for the particular purpose of determining the loss of water from the canals.

Q. 10. From what source does the loss of water in a canal occur?

A. Principally by reason of percolation into the soils, and by evaporation.

Q. 11. Are you acquainted with the canal of The San Joaquin and Kings River Canal & Irrigation Company, the complainant in this suit?

A. I am. I visited that canal in 1884, again in 1886, and again in 1894, in 1897 and in 1898.

Q. 12. In those examinations, did you become familiar with that canal, and the nature of the country through which it runs?

A. I did, yes.

411–421 Q. 13. From your experience as an engineer, as you have described, what would be the probable loss of water in the canal of the complainant from the headworks down to its terminus in Stanislaus county? By that, I mean the average probable loss during the irrigating year?

A. It would be about 25 %. Of course, that is a judgment which I place upon it. I have not measured the flow of that canal at the different points, and do not make that statement from any measurements; but just from a general knowledge and familiarity with the country, and the canal, and its general flow, that is, its flow in a general way, without having, as I say, made any special measurement.

Q. 14. In your opinion, do you mean, that the loss would be at least that much?

A. No sir; I mean to say I would estimate its loss at that amount. The loss may be a little greater, or it may be a little less.

* * * * * * *

422 WALTER JAMES, called for complainant, sworn.

Mr. TREADWELL:

Q. 1. What is your full name, Mr. James?
A. Walter James.
Q. 2. What is your age?
A. I am sixty years old.
Q. 3. What is your business?
A. I am a civil engineer.
Q. 4. How long have you been engaged in the practice of that profession?
A. About 30 years.
Q. 5. Whereabouts?
A. Most of the time in Kern county.
Q. 6. California?
A. Yes sir.
Q. 7. Have you been specially engaged in the matter of irrigation and the management of canals?
A. Yes sir.
Q. 8. Are you now connected with any canal system in Kern county?
A. I am the engineer for the Kern County Canal and Water Company.
Q. 9. How many canals has that company which are under your charge?
A. As engineer I have charge of, I think, ten canals.
Q. 10. What is the length of the longest of those canals?
A. About 32 miles.
Q. 11. What are the dimensions of that canal?
A. I speak now of the Calloway canal. It is 80 feet wide at the bottom.
423 Q. 12. And how deep is water carried in that, to a maximum?
A. It is carried 5 feet in depth of water.
Q. 13. What is the length of the next longest canal under your charge?
A. What is called the East Side canal, a branch of the Kern Island canal.
Q. 14. What is the length of that canal?
A. 25 miles.
Q. 15. And the width on the bottom?
A. 28 feet wide on the bottom.
Q. 16. How deep do you carry water in that?
A. 5 feet in depth.
Q. 17. During your experience in those canals, have you made special examinations to determine the loss of water?

A. Under my directions, special examination was made with reference to the loss of water in the East Side canal.

Q. 18. In the East Side canal, how far do you run that canal before you commence to irrigate?

A. We do not turn out very much water in the first ten miles. Most of the water goes out towards the lower end of the canal.

Q. 19. What loss of water did you find in that canal, that is, the East Side canal?

Mr. STONESIFER: I object to the question as irrelevant, immaterial and incompetent as to what the loss was on that canal. If the witness can say what the loss is on the canal in suit in this action, that will be proper.

A. Of the amount of water turned in at the head of the canal, we have never been able to deliver more than 70 %.

424 Mr. TREADWELL:

Q. 20. Have you, besides the measurements you have made in that canal, generally observed the subject of the loss of water in the other canals under your charge?

A. Only in a general way.

Q. 21. I mean in a general way.

A. Yes sir.

Q. 22. So far as your observation and experience goes, how would the loss in the other canals probably compare with the loss in the East Side canal?

A. The loss in any other of the canals of which I have charge would be greater than that in the East Side canal.

Q. 23. Are you acquainted with the canal of the complainant in this case, on the San Joaquin river, extending from near Mendota into Stanislaus county?

A. I am not.

Q. 24. You never made any special examination of that?

A. No sir.

Cross-examination.

Mr. STONESIFER:

X Q. 1. You would not give any opinion as to the loss on this canal?

A. I am very familiar with the country through which the canal is made. I would have an opinion as to the character of the canal in reference to the loss of water.

X Q. 2. What is the character of the soil in Kern county through which your canals run?

A. On the line of the East Side canal there is somewhere about half the length of the canal which has a hardpan bottom.

425 There are portions of the canal through natural alluvium where the greatest loss takes place.

X Q. 3. Light alluvial soil?

A. Yes sir.

X Q. 4. What do you mean? Is that a porous, sandy soil?
A. Yes sir.

Redirect examination.

Mr. TREADWELL:

R. D. Q. 1. From your experience to which you have testified, and from your acquaintance with the country through — the canal of complainant runs, what is your opinion as to the probable loss of water in that canal?

Mr. STONESIFER: I object to the question upon the ground that the witness has shown himself not competent to testify upon that subject.

A. I would estimate the loss to be greater than in the canal I have mentioned where we have the measurements.

426 F. P. McCRAY, called for complainant, sworn.

Mr. TREADWELL:

Q. 1. What is your name, Mr. McCray?
A. Franklin P. McCray.
Q. 2. What is your age?
A. 50.
Q. 3. Where do you reside?
A. San Francisco.
Q. 4. What is your business?
A. Civil engineering.
Q. 5. How long have you been engaged in the practice of that profession?
A. Since 1868.
Q. 6. Where?
A. In California, Arizona, and Nevada.
Q. 7. To what extent have you practiced your profession on the west side of the San Joaquin valley, in the counties of Fresno, Merced and Stanislaus?
A. For the last three years it has been quite a general location for engineering.
Q. 8. In the practice of your profession, have you had any experience with regard to the loss of water in the flow of canals?
A. Yes, sir.
Q. 9. Where specially have you had that experience?
A. In most all the places I have ever practiced, it is a matter that I have observed.
Q. 10. Have you made any special observations upon that subject with regard to any canal in Kern county?
A. In a general way, yes.
427 Q. 11. What canal or canals?
A. I do not know I can say which particular ones. There have been different canals in that country, the Buena Vista, the James canal, Pioneer, and a number of other canals and ditches;

Wible canal, and one called the Emery. I don't remember the names of the different canals.

Q. 12. You need not give the names of any more.

A. Only in a general way, I speak of these throughout that country, that I have observed this.

Q. 13. Are you acquainted with the canal of the complainant?

A. Yes, sir.

Q. 14. How well acquainted with that canal are you?

A. I have known the canal for the last three years. I have had more or less to do with it.

Q. 15. You have at different times made surveys for the complainant in this case, have you not?

A. Yes, sir.

Q. 16. Are you well acquainted with the country through which that canal runs?

A. Yes, sir.

Q. 17. And the nature of the soil?

A. Yes, sir.

Q. 18. From your experience as an engineer, and from your knowledge of the country through which this canal runs, what, in your opinion, would be the loss of water in this canal from its head down to Stanislaus county?

A. That is a matter that depends somewhat on conditions and circumstances. You mean generally?

Q. 19. I mean the average loss.

A. I should think it would be from 25 % to 30 %.

Mr. STONESIFER: No questions.

428 D. M. ROUSE, recalled for the complainant.

Mr. TREADWELL:

Q. 1. In your management of the canal of the complainant, Mr. Rouse, have you ever observed with regard to the loss of water in the flow of that canal?

A. Yes sir.

Q. 2. Have you ever endeavored to run all the water in the canal down into Stanislaus county, without allowing any to be taken out on its way?

A. Yes sir, in Stanislaus, and also into——

Q. 3. Just answer as to Stanislaus.

A. Yes sir, in Stanislaus.

Q. 4. You have endeavored to get all the water down there?

A. Yes sir.

Q. 5. And allowed none to be diverted in Fresno and Merced county at that time?

A. No sir.

Q. 6. What proportion of the water did you succeed in getting down into Stanislaus county at those times?

A. About half of it, as near as I can remember.

Q. 7. How many times have you had that experience?

A. Most every fall when the water gets low, it does not pay to

divide it up, and instead of making any division of the water, I would run it down to Stanislaus, let them irrigate a week or ten days, and then I would take it away from there and let them have it at some place else. When the water gets short, it is not
429 enough to divide it up. If you divide it up when the water is low, you would not get it.

Q. 8. That is all on that subject. I want to ask some questions upon another subject. What were the regular rates of this company for irrigation, immediately prior to the fixing of the rates by the board of supervisors of Stanislaus county?

A. It was $2.50 for alfalfa.

Q. 9. By that you mean what?

A. By the year.

Q. 10. $2.50 a year for how many irrigations?

A. As many as they wanted, provided we had the water for them.

Q. 11. Very well. Go on.

A. And $2 for grain.

Q. 12. That $2 per year?

A. Yes sir.

Q. 13. $2 per acre per year?

A. Yes sir.

Q. 14. Very well. Go on.

A. And for orchard, $2.50 per acre.

Q. 15. Any others?

A. For gardens, $5 per acre.

Q. 16. Up to the time when the supervisors of Stanislaus county fixed those rates, did you have any special rates?

A. Yes sir.

Q. 17. What was your practice with regard to those special rates?

A. When we had lots of water and had no sale for it, I would let them have it at sometimes as low as $1.25 an acre for grain and young alfalfa; that is, special rates when we had lots of water, but when we had not plenty of water, we did not let any water go at those figures.

430 Q. 18. Were you entrusted with the discretion for the fixing of special rates on such occasions?

A. Yes sir.

Q. 19. How has it been since the board of supervisors of Stanislaus county fixed the rates? What have you done with regard to special rates?

A. After the supervisors of Stanislaus county cut the rates, we gave the people of Merced a lower rate of $2 per acre. We did not think it was right to charge those people $2 and $2.50, when the people below were getting it for $1.50.

Q. 20. Is there any irrigation from the company's canal in Camp 13 section other than that by Miller & Lux?

A. No sir.

Cross-examination.

Mr. STONESIFER:

X Q. 1. You say that you have made special rates of $1.25 an acre, Mr. Rouse?

A. Yes sir, when we had lots of water.

X Q. 2. When you had plenty of water?

A. Yes sir, and no sale for it. That was done in order to encourage those persons in putting in alfalfa, and so forth.

X Q. 3. You charged some $1.25 and some $1.50 an acre?

A. Yes sir.

X Q. 4. And some $1.75?

A. No sir, no $1.75.

X Q. 5. It would be $1.25, then, would it, and $1.50 and $2, at special rates?

A. Yes sir. Sometimes it would be just about the winding
431 up of the season, and if a man had a piece of alfalfa, and it needed water very badly, and we had the water to spare, I would let him have it for $1.25, because we considered that was a benefit to the man, and also we got that much more irrigated.

X Q. 6. If you did not give it to him at a reduced rate, he probably would not take it?

A. No sir, that is so.

X Q. 7. So, in order to get him to take it, you gave it to him at a reduced rate?

A. Well, yes.

X Q. 8. And you found that worked in a good many instances, did you, Mr. Rouse?

A. Well, not in a great many; I suppose some. Most of them will irrigate their alfalfa whenever they think it needs it, whether they get reduced rates or not.

X Q. 9. Who are some of the customers who got it for $1.25?

A. I could not tell you that without looking over the books.

X Q. 10. Can you not remember some of the men who got it for $1.25?

A. No sir, I don't think so.

Mr. TREADWELL: The books show every man who used the water, and the price paid by him.

The WITNESS: Every man who got water at a special rate, you will find it so stated.

Mr. STONESIFER:

X Q. 11. How do you know, Mr. Rouse, how many acres of land have been irrigated?

A. Well, sir, it is all measured.

X Q. 12. Have you done that with all your customers?

432 A. No sir, not with all of them. We irrigate a good deal of Miller & Lux's land by sections and quarter sections, but the most of it is in sections. They have a map, so we can get at it very close. Some of their lands we have measured also.

X Q. 13. But not all of Miller & Lux's land is measured?

A. No sir, I don't think it is all measured. But where there was any doubt about it, we measured it. I measured some land on the Dos Palos section, that is, up at Mr. Leonard's place.

X Q. 14. Who is he—a tenant?

A. He is superintendent for Miller & Lux.

X Q. 15. Is that a farm that they farmed themselves, or do they let it out?

A. Yes sir, they farm that themselves.

X Q. 16. Their tenants get the same rates they do, do they not?

A. Yes sir, their tenants do.

X Q. 17. All of their tenants?

A. Yes sir.

X Q. 18. About how much land is irrigated by their tenants?

A. I could not tell you that.

X Q. 19. You could not give us an idea?

A. No, I will not try to without looking over the books.

X Q. 20. The tenants—is their water charged up to Miller & Lux?

A. Miller & Lux are held responsible for the water used.

X Q. 21. Is it charged up in your books to Miller & Lux?

433 A. No sir.

X Q. 22. In your reports that you make to the home office, do you charge up the water to Miller & Lux that each tenant gets?

A. There is some of it that Miller & Lux pay for. It is all dependent upon the way they rent the land. Some of the tenants rent the land with the understanding that they are to pay for the water, and others Miller & Lux pay the water for.

X Q. 23. I am trying to find out from you how you render your accounts to the home office on that subject. Do you charge it up to the tenants, or do you charge it up to Miller & Lux?

A. If the tenant has agreed to pay for it, we charge it up to him. If Miller & Lux have agreed to pay for it, we charge it up to Miller & Lux.

X Q. 24. As to the Dos Palos colony: This company built a colony, the Dos Palos colony?

A. Yes sir.

X Q. 25. What rate do they pay there?

A. They pay $2 for alfalfa, and $1.50 or $2 for grain.

X Q. 26. Do they get any special rates there?

A. Yes sir, they have a special rate of $1.50 on grain, if they irrigate it. Their regular rates are $2.

X Q. 27. Do all of them pay the $2 on alfalfa?

A. Yes sir.

X Q. 28. About how much land is irrigated there, Mr. Rouse—how many acres?

A. I would not attempt to tell you, sir.

434 X Q. 29. Your reports show, do they?

A. Yes sir. The reports show every acre that is irrigated.

X Q. 30. Have you measured off the Dos Palos colony to see how many acres it has?

A. Yes sir, that is all measured.

X Q. 31. And what percentage of this water is lost by waste water, Mr. Rouse?

Mr. TREADWELL: I would like to have that question explained. I don't understand it myself.

Mr. STONESIFER: It speaks for itself.

Mr. TREADWELL: I object to the question as unintelligible, then. I cannot understand it. It is possible the witness may.

The WITNESS: I do not understand what he means by "waste water."

Mr. STONESIFER: Read the question to him, Mr. Reporter.

(The last question repeated by reporter.)

X Q. 32. I mean the water that runs in your canals, the canals of the company for which you are working. You know what canal I refer to, Mr. Rouse.

A. The main canal of the Dos Palos?

X Q. 33. You have charge of this company's canal, have you not?

A. Yes sir.

X Q. 34. The whole charge of it, have you not?

A. Yes sir.

X Q. 35. You have not charge of any other canal?

A. No sir.

X Q. 36. I am talking about the canal that you have under your charge, Mr. Rouse.

435 A. At different seasons of the year it is different. There are times when we have lots of surplus water, and water that we cannot sell, if we have no sale for it, of course we have either to run that water through into the river down towards Orestimba creek, a portion of it, or let it out at different places that we have.

X Q. 37. Then there are periods in the year in which you waste a great deal of water, are there not?

A. When we are not using it, we, of course, let that water go.

X Q. 38. It flows into the Orestimba creek and Los Banos creek?

A. Los Banos creek, yes.

X Q. 39. There are a great many waste ditches along the canal, are there not?

A. There are not many waste ditches.

X Q. 40. Along the canal?

A. No sir, there is Camp 13.

X Q. 41. Is there a waste ditch there?

A. Yes sir, a slough. Los Banos creek, Las Garzas creek, and Orestimba creek; that is all.

X Q. 42. That is all, is it?

A. Yes sir.

X Q. 43. The company never built any waste ditches, then——

A. (Interrupting.) And there is one at Firebaugh.

X Q. 44. Then, do I understand you that the company has never built any waste ditches?

A. I think the company had something to do with that ditch at

the Las Garzas, if I remember right. That is only hearsay, though.

436 X Q. 45. Do you know anything about that?

A. I do not.

Mr. TREADWELL: The books show it was before his time.

Mr. STONESIFER:

X Q. 46. In operating it, did you operate it as a waste ditch, or what?

A. Yes, sir, we operated it as a waste ditch.

X Q. 47. And it belongs to the company, does it?

A. I could not say whether it belongs to the company, or not. I know that we use it. I know that we used the ditch. It is a natural creek, Las Garzas creek is.

X Q. 48. I am talking about the waste ditch, and not about the creek. It was built specially for the purpose of wasting the water?

A. There is where we run our waste water in on that creek.

X Q. 49. Have you no other waste ditch? Have you not a ditch built specially for the purpose of wasting water?

A. No sir.

X Q. 50. You have not?

A. No sir.

X Q. 51. Then you do not know anything about a ditch that is on the books of this company, known as the Las Garzas waste ditch?

A. That is the one I am speaking about. I say that we run water down that ditch. We have a big canal. We have very small wasteway in Orestimba creek. If they have a good canal and they shut off irrigating, and we have to get rid of that water in some way, we turn some of it out into Las Garzas creek, a certain amount of it, because we cannot carry it on through the canal

437 and waste it in Orestimba creek. Our wasteway is too small. We have only got an 8-foot wasteway there.

X Q. 52. Most of the time of the year there is water running in the Orestimba creek, is there not?

A. No sir.

X Q. 53. There is not?

A. There is not.

X Q. 54. I say, most of the time. Of course, I know there are times when there is no waste water running, but most of the time during the year there is waste water running into Orestimba creek, is there not?

A. We are quite——

X Q. 55. Answer my question. Is there not waste water most of the year running through Orestimba creek?

A. No sir. There may be a little, but that is just what would naturally seep through the box.

X Q. 56. Is there not most of the year waste water running through Las Garzas creek?

A. No sir.

X Q. 57. And through the Los Banos creek?

A. No sir, not most of the year there is not. There are times when there is considerable water running down there. After a big rain, for instance, the creeks are full.

X Q. 58. I am not talking about those times. I am talking about the water from your canal. I do not mean from those creeks. There is water from Orestimba creek running now, is there not?

A. No sir. There may be at times.

438 X Q. 59. You say there is none now today? This is June.

A. If there is today, I don't know it. There has not been any running there for two weeks. I have been putting in a wasteway there. The wasteway washed out. Probably they finished it yesterday. There has been no water going down there for two weeks. That I am certain of.

X Q. 60. Does your canal afford ample water for all your customers?

A. Most of the time. There are times that it is a little short.

X Q. 61. But for all practical purposes, you are able to satisfy your customers' wants, are you not?

A. Yes sir.

X Q. 62. Now?

A. Yes sir.

X Q. 63. With the system in its present condition?

A. Yes sir, at times. At times when we get into the fall of the year, take it from, you might say, the first of August to the middle of March—there are times when the water is very short.

X Q. 64. Do you mean to say that it is short during all of that time?

A. Not all of the time; July—hold on, we commence about the first of August to get short, August, September, October, and November, we have less water than any other time of the year.

X Q. 65. Yes, but you are able during those three months to accommodate the demands of your customers, are you not?

A. No sir, we have a good deal of trouble down at the lower

439 end of the ditch about getting water there.

X Q. 66. You only have trouble down there when it is taken out at the upper end?

A. There are times when there is not water to run down there.

X Q. 67. You mean it is not in the river?

A. Yes sir, it is not in the river.

X Q. 68. Why are you building another canal?

A. There are times of the year when there is abundance of water.

X Q. 69. You hope to be able to accommodate your customers on the other canal, do you not?

A. Hope to?

X Q. 70. Yes.

A. Well, we do along until the water begins to be short; then we turn the water out of the other canal. The old canal has first right.

X Q. 71. What is the water rate under the new canal?

A. It is $1.50 to $2; $2 for alfalfa; $1.50 for one irrigation of grain, or $2 for two.

X Q. 72. That is what you are charging, is it?

A. Yes sir.

X Q. 73. From whom did you get your orders to make that charge

A. From the president of the company.

X Q. 74. From Mr. Miller?

A. I believe Mr. Miller is president.

X Q. 75. Of the firm of Miller & Lux?

A. Yes sir.

X Q. 76. When you make these special rates, do you take your orders from him also?

440 A. I use my own judgment on that.

X Q. 77. That is, as to these special rates?

A. Yes sir.

X Q. 78. Do you ever consult him about it?

A. I have, I think. That is quite a while ago.

X Q. 79. Then you do consult him about it sometimes?

A. Yes sir.

X Q. 80. Get his consent?

A. Of course I get my instructions. I suppose they come through the directors, probably. I sometimes write to Mr. Merritt for information about some things. He is secretary of the company.

X Q. 81. But Mr. Miller is your immediate president?

A. Mr. Miller is the president of the company.

X Q. 82. He is the one that gives you instructions, does he not, anything with reference to the canal?

A. Yes sir, and I have what we call the "rules and regulations" to go by, that the directors have gotten up.

X Q. 83. You charge a rate of $2 this year, do you, under the old canal?

A. Yes sir.

X Q. 84. That is in 1898?

A. That is up in Merced county.

X Q. 85. It would be up to November, 1898?

A. It would be up to July, the first of July.

X Q. 86. November 25th is the time that the company balances its accounts.

Mr. TREADWELL: That has nothing to do with the irrigating year.

441 Mr. STONESIFER: I understand that.

X Q. 87. Your irrigating season is from July to July. I understand that. When you say that you only got about half the water down to Stanislaus county when you turned it in at the headgate, did you make that measurement, or how did you ascertain that?

A. Just by measurement on the gauges, and so forth.

X Q. 88. What gauges?

A. The gauge at the headgate, as we have gauges all along there.

X Q. 89. Did you measure it yourself at this time?

A. I noticed the measurements of the gauges.

X Q. 90. What was the measurement?

A. When we had a foot and a half of water turned in at the headgate, we had a little less than three-quarters down at Orestimba creek.

Mr. TREADWELL:

Q. Three-quarters of what?

A. Of a foot; that is, on our gauge.

Mr. STONESIFER:

X Q. 91. How many gates are there between the headworks and this place where you measured it, where the water could get out?

A. The gates are all closed down.

X Q. 92. I asked you how many gates there were?

A. I could not tell you that.

X Q. 93. Several hundred, are there not?

A. There are a good many, sure.

X Q. 94. And a great many of them leak, do they?

A. A great many of them leak a little bit. When water is
442 so scarce, any gates that we are not using, I haul manure to and put — in so as to shut off all the water.

Redirect examination.

Mr. TREADWELL:

R. D. Q. 1. On these occasions when you are trying to get as much water to Stanislaus county as possible, you prevent all leakage through gates, do you not?

A. Yes sir, all I possibly can.

R. D. Q. 2. So whatever loss there is, is loss by percolation into the soil, or evaporation?

A. Yes sir.

R. D. Q. 3. How does it come that the rates on the outside canal are different from the rates on the main canal? What is the reason for it?

A. It is a less distance to take the water.

R. D. Q. 4. Is there any other reason?

A. It does not cost as much to irrigate there as it does where you run down 50 or 75 miles.

R. D. Q. 5. The irrigation season is very much shorter there, is it not?

A. Yes sir.

R. D. Q. 6. They cannot irrigate as much of the year there on that canal?

A. They have never been able to irrigate there after the 18th of August until along in the winter, or spring some time.

R. D. Q. 7. With regard to the Las Garzas waste ditch, you said that that was a natural slough. Work has been done on that slough by the company, however, has it not?

A. Yes sir.

443 R. D. Q. 8. So as to make use of it for that time?

A. No sir, but not since my time.
R. D. Q. 9. But you can see that it has been fixed?
A. It has been fixed, yes sir.
R. D. Q. 10. When water is running down Orestimba creek from the canal; you frequently dispose of it to irrigators, do you not, and they take it out of Orestimba creek?
A. Yes sir.

Recross-examination.

Mr. STONESIFER:

R. X Q. 1. At this time that you noticed only half of the water coming through Stanislaus county——
Mr. TREADWELL (interrupting): The witness did not say that he saw it at one time. He said every season. I object to your putting words into the witness's mouth that he has not uttered. He testified that every season he endeavored to do this with that result.

Mr. STONESIFER:

R. X Q. 2. Did you, at the time that you noticed the measurement that you spoke of to me, have every outlet gate on the canal stopped up with manure?
A. Not every one. Of course, there may have been some that were just shut down the day before. At that time of the year when the water is so scarce, there are very few gates open.

Mr. TREADWELL:

Q. You do not mean to refer to one particular time in your testimony?
A. No sir.
Q. This is an occurrence every year, is it not?
A. Yes sir, every fall.

444 C. Z. MERRITT.

Cross-examination resumed.

Mr. STONESIFER:

X Q. 43. Mr. Merritt, will you get the voucher for 1896 showing the payment of your franchise tax? While you are at it, you might get the vouchers showing that tax from 1894 to 1898.
A. You mean the vouchers of the secretary's office.
Mr. TREADWELL: Counsel asks for the vouchers showing the payment of franchise tax.
A. Which year do you wish me to get?

Mr. STONESIFER:

X Q. 44. Commence with 1894, and go right through.
A. Do you just wish to know the amount, or do you wish to see the voucher?
X Q. 45. I would like to see the voucher.

A. This is the voucher for the year 1894. The amount of the tax is 99 cents. The amount of the assessment is $150.

X Q. 46. That was what the franchise was valued at, $150 was it?

A. It does not say so here. It simply says, "Personal property as per assessment, $150 valuation."

X Q. 47. That is what it means.

A. We know it as a franchise tax. Whether that is the proper name for it or not, I do not pretend to say. I understand they call it that in the city hall. What they base it on, I do not know, except it is for the general privilege of doing business in San
445 Francisco, a sort of license. For 1895, the bill reads, "San Joaquin & Kings River Canal & Irrigation Company, franchise, $150."

X Q. 48. What does the $150 mean?

A. Value.

X Q. 49. Value of what?

Mr. TREADWELL: We object. The thing speaks for itself. All the witness can do is to read it.

The WITNESS: The amount, $150, is in the column headed "Total valuation."

Mr. TREADWELL: Do you care to go through all of these (addressing the witness). It is $150 for every year, is it not Mr. Merritt? That is the fact?

A. Yes, sir.

Q. The amount of the tax varies, but the assessment is the same.

Mr. STONESIFER:

X Q. 50. They are all just the same.

A. Yes, sir, the amount varies according to tax.

Mr. TREADWELL: It is so, I know, with every corporation in the city. They charge that much for being a corporation.

Mr. STONESIFER:

X Q. 51. Will you tell me what have been the gross proceeds of sales of water by your company since 1873 down to date, that is, taking each year—I mean 1872.

Mr. TREADWELL: Do you mean gross proceeds of sales of water, or gross proceeds for the sale of water for irrigation?

Mr. STONESIFER: Gross proceeds for the sale of water.

Mr. TREADWELL: For all purposes?

Mr. STONESIFER: For all purposes.

Mr. TREADWELL: I spoke of that because there are different accounts.

446 A. This takes me back into a region, and it will take me considerable time to feel my way around and get what you want. They did not keep their accounts in 1872 and following as we keep them now.

Mr. TREADWELL: Why would it not be better to direct Mr. Merritt to make that examination out of this room, in the off hours,

make a statement of it, and bring it here and testify from it. You can go to some other subject now.

The WITNESS: I find an account here headed "Irrigation" which I suppose shows the sales of water for all purposes during those early years. In my time the account has been kept under the caption of "Water account." If you will allow me to read these totals of the account headed "Irrigation" in the old manner, it will take but a few minutes.

Mr. TREADWELL:

Q. You mean, you do not find any other account?

A. I have not so far found any other account. That there is no other, I could not tell without a careful examination of the books. From October 24, 1872, to February 9, 1873, the account shows receipts to the amount of $10,818.89. I am wrong as to the date. It is to February 9, 1874, instead of 1873. I am giving you the totals as shown here at the points where the balances are struck.

Mr. STONESIFER:

X Q. 52. Have you not got balance-sheets to show that?

A. No sir, not in that period.

X Q. 53. Yes, you have.

Mr. TREADWELL: There are not any.

447 A. If you will tell me where to find them, Mr. Stonesifer, I will produce them, but I do not know where to look.

Mr. TREADWELL: There never was any balance-sheet until 1888.

Mr. STONESIFER:

X Q. 54. There were statements of expenditures and receipts up to about ten or eleven years ago.

A. It may be that that will show it. I will get those. As I tell you, I have not looked through this matter, and I do not know just what those old accounts do show. There are no balance-sheets, however, I will repeat, but there are statements of receipts and disbursements for the early years. I suppose it will be satisfactory if I read from these instead of from the ledger.

X Q. 55. They are correct, are they?

A. They are supposed to be correct. I have never gone over them to verify them. The books were experted.

X Q. 56. Were those experted with the books?

A. Of course, I will not be positive what the expert did in those years. I can only speak from inference and general practice. In my time, it has been the custom for the expert to include the annual balance-sheet in his report. I suppose it was so, but that is only a matter of inference.

X Q. 57. I wanted it as from the books; what your books show, but if you are satisfied that that paper is correct, and will say it is correct, that is all I want.

A. I believe this to be correct.

X Q. 58. You believe that to be correctly taken from the books?

A. I do.

448 X Q. 59. And have you compared it sufficiently to say from any comparison that you have made that they are correct?

A. I will say that at the point where I am just now beginning, the comparison of the statement with the books shows that the statement is correct for that year. I have gone no further than that.

X Q. 60. Will you come back at 2 o'clock with a statement as to the cost of maintenance as far as you can ascertain from the books, and the net profits of your company as far as you can ascertain it from the books?

A. That is all ready now. As to the cost of maintenance, it will not take me five minutes to do that.

Mr. TREADWELL: It is already in evidence in "Exhibit 3."

(A recess was here taken until 2 o'clock p. m.)

449 *Afternoon Session.*

C. Z. MERRITT.

Cross-examination resumed.

Mr. STONESIFER:

X Q. 61. What were your gross receipts from the sales of water in 1873? I believe you started in there?

A. No sir, 1872. To December 31, 1872, the gross receipts were $746.

X Q. 62. 1873?

A. To December 31, 1873, $6037.15.

Mr. TREADWELL: Do you mean from December 31, 1872, to December 31, 1873?

A. Yes sir.

Q. The way your answer reads now, it might mean the gross—all together.

Mr. STONESIFER:

X Q. 63. My question means for each year separately.

A. Yes sir.

Mr. TREADWELL:

Q. That is the way you are giving it?

A. Yes sir.

Mr. STONESIFER:

X Q. 64. Call them by years. Say, 1874 so much, and 1875 so much. Then we will not get mixed up.

A. I perhaps had better give the month and the day. I have not followed the calendar year all the way through. I have tried to follow the dates of those statements as nearly as I could
450 from the books. It brings us sometimes in November, and sometimes into December.

X Q. 65. A few days would not make any difference for comparative purposes, as long as you give me the year.

A. If that is understood, I will give the total year by year.

X Q. 66. You do not leave out anything?

A. No sir. The last year was 1873.

X Q. 67. Now 1874?

A. $8269.98. 1875, $20,621.82. 1876, $50,740.82.

X Q. 68. Are you sure of that for 1876?

A. Yes sir, it totals up right.

X Q. 69. You have only $6000 in that year for expenses.

A. This you will find does not correspond with the statement of receipts and disbursements. I do not know why, except that in one case I can see why. I have not compared them as I went along to see how much they varied, but it may be that in some cases I have not struck the same point in making the balance. In one case that I noticed, the account of Miller & Lux, which we will come to in a moment, by the way, was adjusted, allowing them on certain disputed accounts, so that a debit passed to water account, more than equaling the receipts for that year. So that in that year, when we reach it, there will be a debit balance to water account. But as I am stating receipts as shown by the ledger, I give you the totals as I find them, year by year.

X Q. 70. The amount given in the secretary's report of receipts and expenditures for 1876 for water receipts, is $6660.38. I cannot understand the great difference.

A. I can tell you why it was, because I remember now that
451 I looked at that same year myself. That attracted my attention. That was the point at which I gave up trying to follow those statements. The reason is that the Miller & Lux account had been running along for some time, and at this point in 1876 a settlement was made with them whereby a credit passed to water account for water which they had used in irrigation for perhaps three years, I am not sure of the period, but it was for more than the year current. Therefore, the water account received a credit for that year largely in excess of that which related to the current year. In his statement, the secretary appears to have regarded the irrigation for that year, and not for previous years. I had not time to examine his statement sufficiently to determine how he had treated the credits that should have accrued to the water account during previous years, but did not enter into the books.

X Q. 71. It appears, does it, that the secretary of the company at that time does not appear to have considered the question that you mention in rendering his report to the board of receipts and disbursements for the company for that year 1876.

A. I am unable to say how he treated the Miller & Lux irrigation prior to the time when it appeared upon the books as a part of the irrigation account. Evidently he must have treated it in some way. I suppose he must have shown it as a receipt from Miller & Lux, or in some other way it was made to appear upon the books, other than in the water account.

X Q. 72. Very well. Then go ahead with the next year.

A. I did not have time to investigate that question so as
452 to ascertain how he treated it. For 1877, the account shows $31,700.15. For 1878, $26,135.14.

X Q. 73. There is another year in which the receipts and disbursements as reported by the secretary of the company, the water sales, amounted to only $12,780.05. How do you account for the great discrepancy in that year between the report of the secretary and the books of the company?

A. In much the same way. My recollection is that the secretary at that time, in making up his annual statement of receipts and disbursements, did not follow the ledger accounts as they stood. That is to say, the water account may have shown a certain credit, but his statement would not show exactly that credit, because he went through the accounts and recast them for the purposes of that statement, so as to show what was the credit for that year, whereas the ledger account may have shown credits on collections for previous years. I presume it was in that way that those discrepancies arose. I think you will find, if you total it up, that that probably is the case. If you should foot up the receipts as shown by the secretary's report for the whole period, it would probably correspond.

X Q. 74. Will you please look at the secretary's report of the water sales for that year, and read the amount that he there gives for the gross sales of water.

A. $25,975.42.

X Q. 75. Now go ahead with the next year, 1878.

A. 1878, $26,135.14.

X Q. 76. Will you please look at the secretary's report for
453 that year, and read the amount that he there gives.

A. $12,780.05.

X Q. 77. How do you account for that difference between the books and the secretary's report to the company?

A. I think it is all attributable to the same cause. He is making, you will remember, a statement of receipts and disbursements. The ledger account does not show receipts from water; it shows the sales of water for any given year. Up to the time that I began making out a balance-sheet annually for the company, it was the custom to make a statement of receipts and disbursements, not a balance-sheet, and in such a statement the water account would show what had been received for water, whether it was for the current year or for some other year. But the ledger account would show the amounts charged to customers for water, whether collected or not. That, you see, is a very different thing, and would naturally give rise to such a difference as here appears.

X Q. 78. Then you are not reading to me, in answer to my question. My question was, What were the gross proceeds of sales of water for this company?

A. If you will excuse me, that was not your question, but I am answering your question; I am not answering the question as you did ask it. You asked me what were the receipts from water.

X Q. 79. Yes.

A. That is a different thing from proceeds.

X Q. 80. I do not know.

A. You ask for "proceeds" in one case, and "receipts" in another. Proceeds go onto the book, whether received or not.

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X Q. 81. Proceeds you received?

A. I do not know whether it is worth while to dispute about the word "proceeds." But the proceeds for the sale of water, as we use the term, means the gross amount of water sales, whether we make collections for those sales or not. If you use the term in that sense, I understand it. If you use it in any other sense, I would like to have you define it, so I will understand it.

X Q. 82. What I mean is the gross receipts from the sales of water.

A. That I cannot state without a very exhaustive recasting of the accounts. It would be necessary to go through the water account, and see what charges were made to the customers for water, and then go through those customers' accounts, and ascertain how much of those charges were collected.

Mr. TREADWELL:

Q. And when?

A. And when. You can see very readily that it would be a very difficult task.

Mr. STONESIFER:

X Q. 83. Then your ledger and journal do not show under the head of water account, the receipts from the sales of water. Is that it?

A. The ledger under water account shows the amount of the sales of water. But, of course, it cannot, and nobody would expect it to, show the amount of receipts from water sales, unless the company did business on the basis of not crediting water account for any water sold until it collected the money for it, which would be an absurd method of book-keeping.

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X Q. 84. What other account in your books shows gross receipts from the sales of water? What account in your books will show that?

A. No one account.

X Q. 85. No one account will show it?

A. Of course not. It could not, in the nature of things.

X Q. 86. Nowhere in your books?

A. Why, no, certainly not. There is no one account that shows the amount of cash collected in any one year for water. You can see that yourself, whether you are a book-keeper, or not. If Mr. A irrigates to the amount of $100, and Mr. B irrigates to the amount of $200, in any given year, and we collect from Mr. A, we credit Mr. A's account and under water account, and if Mr. B's account stands over until the next year, there is no one account, as you will see, that will show what was collected during the year.

X Q. 87. In the secretary's report, we will take the year 1878, for instance, where there arose a great discrepancy between his report

and the books, he has copied into his report, has he not, and used the same term that your books use, that is, water account?

A. Yes sir.

X Q. 88. In his report he calls it water account?

A. Yes sir.

X Q. 89. And that is exactly the same account that is referred to in your books now?

A. Yes sir.

X Q. 90. And goes by the same name, "Water account"?

456 A. Certainly, but the caption of that account is "Receipts and disbursements," and we have received, as he says, for water account, the amount that he has opposite that caption.

X Q. 91. Where did he get that?

A. I have tried to tell you that at that time he had a very laborious system of recasting his accounts at the end of the year, to ascertain by the examination of the customers' accounts how much had been collected on account of water, and he stated it in this statement of his. That method was not satisfactory, it was so extremely laborious, and showed little as compared to what the present method shows, so it was discarded and the method of showing a balance-sheet which would show profit and loss was adopted. We make no statement now of receipts and disbursements; formerly they did. Now we make a statement of profit and loss; formerly they did not.

Mr. TREADWELL: May I ask a question at this point, Mr. Stonesifer?

Mr. STONESIFER: Certainly.

Mr. TREADWELL:

Q. These old statements of receipts and disbursements would correspond to the cash book, would they not, for that year?

A. Not exactly, because, for instance, if a collection was made from a man by taking produce from him, that would not appear on the cash book.

Q. In all other respects it would correspond to the cash book, would it not?

457 A. Yes sir, unless something were turned over by the party in lieu of cash, and it passed to the credit of the party's account and to the debit of the material account, whatever it might be, through the journal.

Q. If, however, all the receipts were in money, then these statements of receipts and disbursements would exactly correspond with the cash book, would they not?

A. With that portion of the cash book which represented receipts for water.

Q. That is what I say. So with each item of these statements.

A. Yes sir. Of course, there are many other items in the cash book.

Mr. STONESIFER:

X Q. 92. Do your books show the amount that the company failed to collect of the proceeds of water?

A. Not in any one account. We would have to go through the customers' accounts and analyze each one of them.

X Q. 93. Then we cannot look at your journal, or ledger, or cash book, and determine from that how much the company failed to collect from the sales of water?

A. Not at a glance. You can determine it from them, if you will take time enough.

X Q. 94. How?

A. As I said, by analyzing each customer's account.

X Q. 95. Does each customer have an account in the journal?

A. No sir. We don't keep accounts in the journal.

X Q. 96. Or in the ledger?

A. Each customer has an account in the superintendent's ledger.

458 They are grouped together in one account in my ledger, that is to say, with the exception of a few which are segregated in separate accounts. That is merely a matter of convenience of method, however.

Mr. STONESIFER: I suppose, then, we will have to go ahead without that.

Mr. TREADWELL: I do not understand, and so I would like to ask you what you are trying to get at. But, for the purposes of this case, if you have proved by him what the entire proceeds were, whether collected or not, we should not attempt to show that any of them were not ultimately collected. There were some, of course, that were not collected, but we will agree to let it stand as if they were all collected, if that will suit you.

Mr. STONESIFER: I am trying to get at the truth. I do not want anything except just the facts.

Mr. TREADWELL: That is the truth. If I am running a store and sell merchandise, I credit merchandise account with every sale I make, and that shows the result year by year. So the water account in our books shows how much water we did sell.

Mr. STONESIFER: I cannot believe that the company sold $30,000 worth of water, and only collected $12,000.

Mr. TREADWELL: They do not say so. It means that they did not collect but $12,000 for that year. Lots of these accounts are not collected until the next year. But the total of it will foot up to the total amount, except the small amounts that they lost.

Mr. STONESIFER:

X Q. 97. Go ahead upon that method, and inform us now

459 from your books—and as far as the collections are concerned, I suppose we will have to guess at it——

A. No sir, you do not have to guess at it. All you have to refer to is the secretary's statements of receipts and disbursements up to the time he ceased rendering such statements. That will show you

the collections, if you want to know the collections, very conclusively.

X Q. 98. I do not know whether it shows it or not.

A. Very well. If you wish to take that position, I have nothing to say. But I tell you that it does.

X Q. 99. What were the proceeds of sales of water in 1879? I believe that is the next year.

Mr. TREADWELL:

Q. Has 1878 been given?

A. Yes sir, 1878 was given. For that year it was $26,135.04. For the year 1879, the water account shows a debit balance of $4421.54, for the reason that I explained before.

Mr. STONESIFER:

X Q. 100. A debit balance?

A. Yes sir.

X Q. 101. Does that mean that there were sales of that much?

A. No sir.

X Q. 102. What does that mean?

A. The debit balance means that the sales of water that year were offset by the credit which was allowed Miller & Lux on disputed bills.

X Q. 103. I am asking you for proceeds of the sales of water.

A. Yes sir, and you are getting it just as fast as you will allow me to give it in.

X Q. 104. Very well. Go ahead and explain that, then.

Mr. TREADWELL: Just explain it over again right now, 460 Mr. Merritt.

A. In the year 1879, a settlement was made with Miller & Lux, allowing them a certain amount on disputed bills, of which amount some $70,000, if I remember rightly, was charged to water account, that being the proportion of the disputed bills which involved water. That debit to the water account was more by $4421.54 than the total revenue for water for that year.

Mr. STONESIFER:

X Q. 105. What were the water receipts, then, for that year?

Mr. TREADWELL: Let us understand this. When you say "receipts," do you mean "collections"?

Mr. STONESIFER: Water receipts; the receipts from water.

Mr. TREADWELL: Do you mean in money collections?

Mr. STONESIFER: Yes.

Mr. TREADWELL: Very well. Proceed.

A. The collections that year, according to the secretary's report, were $45,535.73. If you will allow me, I will look at the ledger to see what the amount was that was charged to the water account. I said $70,000. I think that must have been a mistake.

Mr. STONESIFER: No, you are right on that. It was $71,000.

Mr. TREADWELL: Let us get the exact amount, so as to be sure we are right.

A. (After referring.) $70,085.28 is the amount of this one item of credit.

Mr. STONESIFER:

X Q. 106. Do you mean that that was the amount paid in?

461 A. No sir, I do not mean that at all. I mean the reverse. I mean that that was the amount that was allowed to Miller & Lux.

X Q. 107. In other words, that much was knocked off from Miller & Lux's account for water?

A. Yes sir, that had been previously charged to them and credited to the water account, and when it was agreed that that had been charged in error, or for some other reason, I don't know what, their claim of an overcharge was allowed, the account that had been credited was debited for the amount that was then allowed.

X Q. 108. Up to that time, what was the account of the company against Miller & Lux for water?

A. I do not know.

X Q. 109. Do not the books show?

A. The books will show it if you take time to pick it out, but they do not show it on the face, you know very well, and I cannot tell it in a minute. It is an expert's work to figure that out.

X Q. 110. I shall have to ask you to ascertain the amount due the company at that time from Miller & Lux for the sale of water.

A. Then you will have to adjourn this hearing, and give me several days to hunt it up. You had two or three weeks to tell me what you wanted me to do, and have not told me a thing. You know very well I cannot do that in a minute. It took your experts several days to find these things for you.

462 X Q. 111. Do you know the suit that was pending at that time between Miller & Lux and the company upon this question?

A. No, sir. I know there was a suit. I never looked into the matter in detail. I do not know what the issue was.

X Q. 112. You do not know anything about that at all?

A. Only in a very vague and general way.

X Q. 113. It was an action, was it not, brought by the company against Miller & Lux for these water rates that they had refused to pay?

A. I never saw the complaint. I don't know.

Mr. TREADWELL: I object. The complaint will be the best evidence of that.

Mr. STONESIFER:

X Q. 114. Have you the complaint amongst the records of the company?

A. I may have. I never looked to see.

Mr. STONESIFER: In this connection, I suppose we can agree, Mr. Treadwell, that the judgment-roll and the pleadings in that case may go in evidence?

Mr. TREADWELL: It can be considered that you offer them now.

Mr. STONESIFER: Yes, consider that I offer them now, and they go in at this point while we are upon this subject.

Mr. TREADWELL: Hereafter you will present a copy of such part of them as you care to have in the record.

Mr. STONESIFER: Yes.

Mr. TREADWELL: Very well. That answers the whole thing.

Mr. STONESIFER: As I understand it, it was an action in the 15th district court.

463 Mr. TREADWELL: I think that was it.

Mr. STONESIFER:

X Q. 115. It appears from your books that there was such an action, and that it was settled, does it not?

A. You ask me that question, do you?

X Q. 116. Yes.

A. There is an entry in the books touching the matter. I do not — just how much it shows.

X Q. 117. There is an entry, is there not, in the minutes of the board of trustees in this connection?

A. I think very likely there is.

X Q. 118. Will you read that entry now while we are on that subject? Please read from the minutes of the board of trustees of October 30, 1879, what action the board of trustees of this company took with reference to this litigation with reference to Miller & Lux, about their water bill.

A. (Reading:) "Mr. Center, chairman of the committee appointed "at last meeting, said the committee had made a careful examina- "tion into the case of The Company *vs.* Miller & Lux, and presented "their written report, which he read. Mr. Potter moved that the "report be received and placed on file; motion seconded and car- "ried.

"Mr. Rosenberg then offered the following resolution, and moved "its adoption:

"Whereas, there is a suit pending in the district court of the nine- "teenth judicial district of the State of California, entitled The San "Joaquin and King's River Canal and Irrigation Company *vs.*

464 "Henry Miller and Charles Lux, in which case the said de- "fendants have filed a cross-complaint against said plain- "tiffs;

"And whereas, it is desirable to settle and compromise said suit "and cross-action,

"And whereas, it is important to this company that it should have "a right of way over the lands of said Miller and Lux for its canal, "of a width of one hundred feet on each side of the center line of "said canal, which they are willing to grant,

"And whereas, the owners of more than three-fourths of the stock "of this corporation acquiesce in a settlement upon the basis em- "bodied in this resolution.

"Therefore, resolved, That this company hereby expresses its

"willingness to compromise and settle all matters in difference with "said Miller and Lux as follows:

"1. Said Miller and Lux shall by deed convey to this company a "right of way for said canal over their lands, where said canal has "been constructed, of the width of one hundred feet on each side of "the center line of said canal.

"2. That subdivision fifth of the contract referred to as Exhibit "'A' in the complaint filed in said action, shall be construed to mean "that this company will deliver water thereunder at the regular "rates, not exceeding one dollar and twenty-five cents ($1.25) per "acre per crop, provided the crops are cut, but in case the alfalfa "lands should be pastured, then each supply of water of the usual "quantity supplied to produce a crop shall be deemed to be such a "supply as will entitle a charge to be made therefor, the same as if "a crop shall be cut, and said subdivision shall likewise
465 "apply, with the proviso aforesaid, to said Miller and Lux, "their tenants, employees, heirs, executors and administra- "tors, and shall run with the land so long as this company exists to "the extent of thirty-three thousand, three hundred and thirty-three "and one-third (33,333⅓) acres, but shall not apply to the grantees "of said Miller and Lux, nor to the grantees of their heirs, execu- "tors or administrators; and subdivision tenth of said contract shall "apply to all domestic animals owned, pastured or cared for by "Miller and Lux, their tenants, employees, heirs, executors or ad- "ministrators.

"3. That the conditions and stipulations above referred to shall "be placed in such proper form as shall be binding upon this com- "pany and said Miller and Lux.

"4. And that thereupon said action and cross-action shall be dis- "missed, each party releasing the other from all claims and demands "referred to in said action and cross-action.

"5. That the president and secretary are hereby authorized to "carry this resolution into effect."

X Q. 119. Who were the trustees present at that meeting?

A. There was present Messrs. Sedgley, Center, Rosenberg, Potter and Bolton. Do you wish the proceedings of the next meeting read, where there was an order to make an entry carrying into effect this action?

X Q. 120. Yes, you can read that.

A. It is at page 274. "Mr. Center offered the following resolu- tion."

466 X Q. 121. Under what date was that resolution passed?

A. November 28, 1879, that is the one which is about to be read. I will go back a little:

"The president reported that the resolution passed at last meet- "ing had been carried into effect as therein authorized; that under "subdivision four of said resolution a supplementary agreement had "been made with Miller & Lux, dated November 12th, 1879, which "followed strictly the letter of the resolution; that Miller & Lux "had deeded to the company a right of way 200 ft. in width; and "that the suit and cross-suit had been dismissed.

"Mr. Center offered the following resolution:

"Whereas, this company has ever since the year 1874, charged "Miller & Lux for water used by them the full rates of $2.50 & $3 "per acre, and the same has been entered upon the books of the "company as a debit to their account, and

"Whereas, this company brought an action against Miller & Lux "to recover the amount so charged, & other disputed charges up to "the date of said suit, and for the purpose of establishing the legal "construction of a certain contract with them dated Feb'y 7, 1872;

"And whereas, Miller & Lux have paid for all of said water at the "price of $1.25 per acre per crop, the price mentioned in said con- "tract;

"And whereas, this company entered into a supplementary con- "tract with Miller & Lux, dated November 12th, 1879, by
467 "which it was agreed that said contract of Feb'y 7, 1872, should "be construed to mean that they are entitled to water there- "under during the existence of this company at a rate not exceed- "ing $1.25 per acre per crop (the rate at which they have paid in "full for water supplied to June 30, 1879), and that said suit should "be dismissed.

"Therefore, resolved, that the am't now standing to the debit of "Miller & Lux on the books of this company, being the excess over "$1.25 per acre per crop for water as above, and other charges in- "cluded in the said suit now dismissed, be cancelled & removed "from their account, and the secretary is instructed to make the "proper entries to that effect.

"The resolution was seconded by Mr. Rosenberg, & carried by "the following vote: Ayes: Messrs. Center, Rosenberg, Sedgley & "Bolton (4). Noes: None. Mr. Lux not voting."

468 X Q. 122. Under this resolution, Miller & Lux were credited, then, with this amount that you have stated, $70,000?

A. Yes sir.

Mr. TREADWELL:

Q. In that connection, will you give the date of that credit in the books. It does not seem to correspond, according to my recollection.

A. November 29, 1879.

Mr. STONESIFER: It is November 25th there.

Mr. TREADWELL:

Q. What I want to get at is this: You were reading from the year 1878——

A. (Interrupting.) Oh, no; 1879.

Q. That is the water receipts for 1879, is it?

A. It was the water receipts for 1879 we were talking about.

Q. About the debit balance?

A. Yes sir.

Mr. TREADWELL: I was mistaken, then, in the date.

Mr. STONESIFER: We are now on the water receipts for 1879.

Mr. TREADWELL: Very well, 1879.

The WITNESS: Shall I now proceed to the next year?

Mr. STONESIPER:

X Q. 123. Yes.

A. The net credits to water account for 1880 were $45,705.62.

X Q. 124. Those were the gross sales?

A. Yes sir, the gross sales.

X Q. 125. What were the gross receipts for that year?

A. $40,662.03. For 1881, $47,732.68.

X Q. 126. That is the gross sales, is it?

A. The gross sales, yes.

469 X Q. 127. Now give us the gross receipts.

A. $42,552.16.

X Q. 128. Now for 1882.

A. The gross sales were $66,208.31.

X Q. 129. And the gross receipts?

A. Gross receipts, $64,256.85.

X Q. 130. Now, the gross receipts for 1883.

A. For these following years, 1883 to 1886 inclusive, I had only reached that point when it was time to begin the hearing, so that I jotted down the receipts as shown by these statements, inasmuch as they were my own, and I knew they were correct. But it did not occur to me at the time that they did not correspond with the ledger for the reason I have before stated, that these represented receipts, and the ledger represents total sales. So if you wish to know the total sales, I shall have to take a few moments to make the subtractions.

X Q. 131. I am not so particular. Give us the gross receipts and the gross sales for those years.

A. For the year 1883, the gross receipts were $62,561.50, and the gross sales were $64,661.50. For 1884, the gross receipts were $38,361.60, and the gross sales were $38,361.60.

X Q. 132. Now for 1885?

A. For 1885, the gross receipts were $47,337.45, and the gross sales were $47,337.45.

X Q. 133. Now for 1886.

A. For 1886, the gross receipts were $25,286.39, and the gross sales were $25,286.39. That closes the period when state-

470 ments of this character were rendered. From this time on, I can give you only the gross sales. How much was collected cannot be ascertained without going through the accounts of the customers, and making an analysis of each one, and then totaling the amounts.

X Q. 134. Beginning with 1887, your company annually issued a balance-sheet, did it not?

A. Yes sir.

X Q. 135. Does that balance-sheet show the proceeds of sales of water.

A. It does in the sense in which I understand the term. That is to say, it shows the gross sales less corrections.

X Q. 136. It is approximate?

A. It would be the gross proceeds if all bills were collected. Do you wish me to state those amounts to you?

X Q. 137. Yes.

A. For 1887, $51,901.45. For 1888, $55,143.05. For 1889, $51,352.75. For 1890, $20,748.85. For 1891, $48,980.40. For 1892, $60,881.72. For 1893, $62,452.43. For 1894, $75,666.80. For 1895, $65,479.86. For 1896, $67,659.34. For 1897, $64,145.12. For 1898, $78,466.07.

X Q. 138. How far back will you have to go to ascertain the annual cost of maintenance——

Mr. TREADWELL (interrupting): That is, you mean how far back can he go?

A. I can state the annual cost of maintenance for no year earlier than that ending November 25, 1887.

Mr. STONESIFER:

X Q. 139. When the books of the company were first
471 opened, the first few years, maintenance and construction were all one thing, were they not?

A. There is no separate account on the books of the company kept for maintenance.

X Q. 140. They are charged up in the same account?

A. Yes sir.

X Q. 141. Under the head of "Construction"?

A. Yes sir, and afterwards under the head of "San Joaquin canal."

X Q. 142. And in 1887, you say your books were kept so that you could ascertain only the cost of maintenance?

A. Beginning November 25, 1886, and this, as I say, was for the year ending November 25, 1887.

X Q. 143. Your books, as I understand it, were being kept so that the construction account and the maintenance account were all kept in one, under the head of "Construction." Up to what time?

A. December 5, 1877, was the last charge to the old account.

X Q. 144. The old what account?

A. The account entitled "Construction," and the new account entitled "San Joaquin Canal account" was opened by a transfer of the debit balance of construction account on December 10, 1887, to the San Joaquin Canal account.

X Q. 145. Then that account, the San Joaquin Canal account, carried the cost of construction and the cost of maintenance?

A. Yes sir.

X Q. 146. They were all mixed up together?

Mr. TREADWELL: A moment ago you said December 10,
472 1887, as the date of the transfer. Diy you mean that?

A. No sir. I meant 1877.

Mr. STONESIFER:

X Q. 147. Then from 1877 on to what time was the construction account and maintenance account kept together?

A. Until November 25, 1886.

X Q. 148. And then you opened in your books an account called the maintenance account, did you?

A. Yes sir.

X Q. 149. Will you now give us the annual cost of maintenance from your books, beginning with the period that you have designated; that will be from November 1887.

A. The year in each case closes with November 25th.

X Q. 150. The year I refer to begins with 1886, but on November 25, 1887, the first year will end.

A. On November 25, 1887, the cost of maintenance for the year was $18,568.08. For 1888, $20,444.78. For 1889, $23,099.18 For 1890, $23,073.07. For 1891, $20,599.73. For 1892, $17,963.31. For 1893, $19,337.32. For 1894, $33,689.95. For 1895, $21,631.08. For 1896, $23,319.85. For 1897, $19,940.87. For 1898, $29,526.51.

X Q. 151. What was it that increased the cost of maintenance in 1898 above the average of the preceding years?

Mr. TREADWELL: I would suggest that if the witness will look at "Exhibit 3," it is itemized there, and he can answer more readily.

Mr. STONESIFER:

X Q. 152. Just give it then in that way so that it appears.

473 A. On account of cleaning, I think the Parallel canal——

Mr. TREADWELL: There were a good many different items.

A. (Continuing:) My recollection is that it was the Parallel canal principally.

Mr. STONESIFER:

X Q. 153. And some litigation that you had?

A. Oh, yes, that is true.

Mr. TREADWELL: Just look at the items, and you will see which the items are that are considerably increased—labor and legal expenses.

A. That would apply to the labor item and in legal expenses, there was a considerable increase, chiefly due to the suit of Mr. Lowery against the company for damages. Increase in subsistence would also be due to the cleaning and to the cost of horses and feed.

Mr. STONESIFER:

X Q. 154. That litigation you explained in your direct examination?

A. Yes sir.

X Q. 155. The figures that you there gave would apply to this?

A. Yes sir.

X Q. 156. The cost was some five or six thousand dollars, was it not?

A. I believe it was, yes.

X Q. 157. I believe that you have given us some figures in your

cross-examination, which we have not completed, as to the cost of construction of certain portions of the canal. I am not sure. I will ask it anyhow now over again. What was the cost of con-
474 struction of extension A? I understand that to be the canal from Los Banos creek to Orestimba creek.

A. Yes sir. The cost was $122,777.58.

X Q. 158. Now, the cost of construction of extension B, which is from the Orestimba to the terminus of the canal?

A. $15,924.56.

X Q. 159. Now the cost of the Dos Palos branch?

A. $20,938.27.

X Q. 160. Now give us the cost of the parallels. You have got a system of parallels, as I understand, from the dam down the canal about 40 miles.

A. Below Firebaugh's. It parallels it as a whole. There are three subdivisions.

Mr. TREADWELL: Three separate accounts. It was constructed at three different times.

Mr. STONESIFER:

X Q. 161. All I want is the cost of those parallels, all of them as a whole.

A. I can just as well give them separately. It is a mere matter of computation, then, to state what they amount to as a whole.

X Q. 162. Very well. Give us parallel No. 1.

A. Parallel No. 1 cost $9852.27.

X Q. 163. Parallel No. 2?

A. No. 2 cost $26,053.34. No. 3 cost $11,220.96.

X Q. 164. Does that include all of your canals with the exception of that portion from the Los Banos to the dam?

A. It includes all of the canal that was constructed in the spring of 1896, with the exception of the canal from the dam to Los Banos, and with the exception of the Las Garzas waste ditch.

475 Mr. TREADWELL: I would like to ask a question.

Q. What do you mean by "excepting the canal from the dam to Los Banos"? Do you mean the figures which you have just given?

A. I mean to say that the canals which he has enumerated, from Los Banos to Orestimba, from Orestimba to the present terminus, the Dos Palos Colony canal, and the parallel system, embraces the entire system with the exception of the main canal from the dam to Los Banos creek, and the outside canal which has been constructed since the rates were fixed by the board of supervisors of Stanislaus county. It does not include all of the construction account as related to those portions.

Mr. STONESIFER:

X Q. 165. I know that, but what I want to get at is, that this is your complete canal system with the exception of that portion from the dam to Los Banos, built in 1871 and 1872, and along there.

A. That is correct. The parts that I have named constitute the system.

X Q. 166. That would be 38½ miles, I believe it is called, from the dam to Los Banos creek?

A. Yes sir.

X Q. 167. At the time that the rates were fixed by the board of supervisors of Stanislaus county, this was your whole plant, with the exception of that portion you have mentioned from the dam to Los Banos creek?

A. Yes sir.

X Q. 168. This outside canal that you have mentioned has
476 been built since then?

A. Yes sir.

X Q. 169. What do your books show to be the amount paid out under the construction account to the first day of January, 1872?

A. On the first of January, 1872, the construction account shows a debit balance——

X Q. 170. (Interrupting.) No, I ask you what was paid out.

A. I can only give you what the account shows. This is presumed to have been paid out. On December 31, 1871, the balance and debit of construction account is $72,832.88.

X Q. 171. What assessments had been levied and collected by the company up to that date, on the stock of the company?

A. In answer to that question, I should like to say that I have noticed, in looking over the books, that there was a time, or there were times, when the secretary was in the habit of crediting assessment account and charging the various stockholders with the amount of assessments prior to the collection of the assessments, so that it would have to be understood that in answering the question as to the amount of the assessments, I am not examining the accounts sufficiently to ascertain whether that was the case at the point about which you inquire. I shall simply give you the showing of the assessment account at the date that you name.

X Q. 172. That is the correct amount, is it?

A. It is the correct amount of the account as it will show, but it may include amounts which are credited to assessment account and charged to the stockholders, and not collected at that time.
477 They were all collected later, if not at that time. I simply wanted to state the possibility of a difference between the account at any given date and the amount actually collected on assessments up to that date.

Mr. TREADWELL: I understood the question to be, what was the amount of the assessments?

A. No, he said "levied and collected." It was on account of the word "collected" being in the question that I have made this statement. I wish to have the record show that I have made the statement. "Levied and collected" is one thing, and "appearing on the books of the company" is another thing.

Mr. STONESIFER:

X Q. 173. Give me the amount levied first.

A. Up to December 31, 1871, the assessments credited to the assessment account are $191,250. That is all I can tell you.

X Q. 174. You say "credited to assessment account"?

A. Yes sir.

X Q. 175. You can give me in round numbers how much was levied up to that date?

A. If you will separate those two questions, I will tell you how much was levied from the face of the assessment book, because I cannot tell from looking at the face of the ledger whether it included all of the assessments levied or not.

X Q. 176. The way you answer the question, there is too much uncertainty about it.

A. Because the question is asked in such a way that it makes it necessary to do it. I do not wish to make any unnecessary uncertainty, but I wish to have it understood that there was a
478 variation, apparently, in the custom of the secretary; at times, he would simply credit the assessment account at the time the money was collected, and at other times, he would credit it before the money was collected, and charge it to the individual stockholders, crediting it to their account when collected. That being the case, I cannot tell you, without going into the thing more thoroughly, what was collected. I can tell you what was levied. The amount of the assessment levied prior to December 31, 1871, was $191,250.

X Q. 177. Can you tell from the books whether or not the company owed anything on that date, say January 1, 1872?

A. I could make a trial balance of the books on that date, and it is possible there may be one in existence, but I haven't it here.

X Q. 178. Would the bank account show?

A. I do not see any bank account. I do not think they kept it in the ledger.

X Q. 179. From an inspection of the books, can you observe any account which will show whether the company owed anything on that day, or not?

A. Yes sir. I find one account here that shows a debit balance on that date.

X Q. 180. Of how much?

A. $322.29.

X Q. 181. Was not the custom of the secretary to furnish annually a financial statement of the company?

A. There was a statement of receipts and disbursements furnished. I do not know that he ever furnished anything more than
479 that, at that period. It is altogether probable that there may be a trial balance in existence of that date. I do not know anything to the contrary. I do not know that there is, either.

X Q. 182. I wish you would search and ascertain if there is a trial balance. Do that at your leisure. During the years 1871 and 1872, the company was actually engaged in the construction of another canal besides this one, was it not?

A. I don't know. I heard that Mr. Stangroom made some statements about that, but I have no knowledge apart from that.

X Q. 183. Do you- books show anything with reference to it?

A. The superintendent's statement, taken in connection with Mr. Stangroom's testimony, shows something with regard to it. I am not clear as to the date, but I think it was in 1872.

X Q. 184. You have stated in this "Exhibit 12" that all work on the upper canal, as per "Exhibit 7," is $9026.23, as though that was all the work that was ever done on the upper canal.

A. Oh, no. That is not the inference.

X Q. 185. What do you mean by that, then?

A. I mean to say that that was all that I knew anything about at that time. There was work done later on that canal, as our books will show.

X Q. 186. There was work done in 1871 on that upper canal, was there not?

A. I am not aware that there was, unless that was the year this was done. I was not certain when I gave the answer, but I think it was in 1872.

480 X Q. 187. That the work was done on the upper canal?

A. Yes sir, this work that Mr. Stangroom referred to in his testimony.

X Q. 188. There was other work besides that, was there not, that $9000 that he referred to?

A. Not that I know of.

X Q. 189. Whatever work was done on that canal appears in the construction account, does it not?

A. This $9000 appears in the construction account, but I do not know of any other items in the construction account that had their origin in that canal.

X Q. 190. Whatever work was done on that would be in the construction account?

Mr. TREADWELL: What do you mean by "work done"? Do you include engineering, surveying, etc., or what do you mean? Those things were kept in different accounts.

Mr. STONESIFER: Several things go to make up work.

Mr. TREADWELL: I would like to have you define it. You need not if you do not want to, of course.

Mr. STONESIFER: Construction, excavation, and many things go to make up work.

The WITNESS: Are you waiting for an answer from me?

Mr. STONESIFER:

X Q. 191. Yes.

A. I beg pardon. I did not understand the question.

Mr. STONESIFER: Read the question, Mr. Reporter.

(The reporter reads the question as follows: "Whatever work was done on that would be in the construction account?")

A. Not necessarily, and I have no knowledge or any indi-
481 cation of its appearing there.

X Q. 192. Where would it appear in the books of the company, if not in the construction account?

A. It might appear in the engineer's office account.

X Q. 193. Show it to me.

A. The engineer's office account?

X Q. 194. Yes, in that account where any work was ever done on the Tulare Lake canal.

A. I just told you that I had no knowledge of any such work being done. I could not very well tell you where it would appear.

X Q. 195. My question was, if any such work was done, it would be in the construction account, would it not?

A. And I said no, not necessarily.

X Q. 196. Where would it be?

A. If it was engineer's work, it would be in the engineer's office account, very likely.

X Q. 197. Suppose it was excavation?

A. It might appear in the construction account.

X Q. 198. That would be the proper place, under their system of keeping books at that time?

A. I should rather expect to find it there.

X Q. 199. If anywhere, it would be there?

A. I should expect so, but I cannot testify as to where it probably would appear.

X Q. 200. Can any one find out from the books where it would appear.

A. I cannot tell you, because I have not explored the books sufficiently to ascertain. What they would find out if they
482 should examine the books critically, I cannot tell you. I have not seen it so far as I have examined the books. Whether a further examination than I have given the books would reveal anything of the sort, of course I cannot tell.

X Q. 201. Then you do not know of anything that will show whether or not the construction work done on the Tulare Lake canal appears in the construction account, or not?

Mr. TREADWELL: We object to the question, because it assumes that there was such work done, and there is no such testimony in the case.

A. If any such work was done, I cannot state positively where the charges for it would appear.

Mr. STONESIFER:

X Q. 202. There is no such entry in the construction account, is there, of any such work?

A. Not to my knowledge.

X Q. 203. Do your books anywhere show that any such work was done?

A. I understood your question to relate only to the year 1871.

X Q. 204. 1871 and 1872, the question refers to.

A. Of course, my last answer would not be exactly correct, because I have already stated there was some work which appeared in 1872,

that which you referred to as having been done under Mr. Stangroom.

Mr. TREADWELL: I did not understand you to say that was in 1872, but that you did not remember what year that was.

A. If that was in 1872, of course I did not mean to say that that did not appear.

Mr. STONESIFER:

X Q. 205. Was any work done there in 1873?

483 Mr. TREADWELL: I will state here now that "Exhibit 7," which is the report in question, is dated December 6, 1872, Mr. Stangroom's report, showing that $9000.

Mr. STONESIFER: There was a great deal more work done there than $9000.

Mr. TREADWELL: That was everything that was ever done there before 1875.

Mr. STONESIFER:

X Q. 206. Have you ever seen Brereton's report, where he shows an expenditure of $25,000?

A. No sir.

Mr. TREADWELL: I object to any question concerning a document, unless the document is before the witness.

Mr. STONESIFER: It is in your possession now.

Mr. TREADWELL: We will produce anything that you ask for.

Mr. STONESIFER: I make that as a statement.

X Q. 207. Mr. Merritt, will you please examine your minutes of January 21, 1873, on page 55 of the Minute Book, and will you read from that page 55, beginning with "On motion of Mr. C. Lux," and concluding with the words "where completed."

A. (Reading:) "On motion of Mr. C. Lux, seconded by Mr. A. H. "Rose, Resolved, That as this company, in the midst of one of the "seasons of drought which periodically visit this rich & productive "portion of the State, commenced this enterprise as a permanent "relief, & having expended a large amount of money, now ask for "Government assistance to a work not second in importance to any "public enterprise ever undertaken on the Pacific coast. This com-
"pany proposes to construct about 300 miles of canal for irriga-
484 "tion & commercial purposes, 40 miles of which are already
"built, and its waters are eagerly sought after by the inhab-"itants of the locality. The size of the canal is 50 feet wide, and "carrying 4 ft. of water. They ask from the Federal Government "the proceeds of the sale of two of the even sections of the public "lands adjacent to the odd sections in the several counties in the "valley which have been granted to the Western Pacific & to the "Southern Pacific Railroad Companies, for every mile of canal of "this capacity where completed."

(By consent of counsel, an adjournment was here taken until tomorrow, Wednesday, June 7, 1899, at 10.30 a. m.)

485 WEDNESDAY, *June* 7, 1899.

Counsel appearing: For the complainant, W. B. Treadwell, Esq. For the respondents, C. A. Stonesifer, Esq.

C. Z. MERRITT.

Cross-examination resumed.

Mr. STONESIFER:

X Q. 208. Mr. Merritt, how far back do you have to go to ascertain the net profits of your corporation?

A. To the year ending November 25, 1887.

Mr. TREADWELL: That is, you mean you cannot ascertain it further back than that? You say, "How far back do you have to go to get it."

Mr. STONESIFER: To get it, yes.

Mr. TREADWELL: How far back can he go, I suppose you mean.

Mr. STONESIFER: Yes, how far back can he go.

The WITNESS: That is what I understood your question to mean, and that is what my answer referred to.

X Q. 209. Beyond that you do not know what the net profits were?

A. I do not.

X Q. 210. Will you please state, then, what they were, from the time that you have designated up to the present time?

486 Mr. TREADWELL: Year by year?

Mr. STONESIFER: Yes, for each year.

A. When I give the year, it will be understood that I mean the fiscal year ending November 25th in each case.

X Q. 211. Very well.

A. For 1887, $34,106.42. For 1888, $28,817.17. For 1889, $23,812.16. For 1890, net loss, $403.37. For 1891, net profit, $28,309.21. For 1892, $44,320.17.

X Q. 212. Net profit?

A. Yes sir. It will be net profit in every case unless I otherwise indicate. For 1893, $44,335.80. For 1894, $43,194.85. For 1895, $46,403.01. For 1896, $42,885.11. For 1897, $45,549.80. For 1898, $48,859.85.

Mr. STONESIFER: I now desire to read in evidence certain extracts from the minutes of the board of trustees.

Mr. TREADWELL: You are referring now to volume I of the minutes?

Mr. STONESIFER: Yes.

Mr. TREADWELL: I call your attention to the fact that the entire book is in evidence already.

Mr. STONESIFER: I offer in evidence the minutes of September 28, 1871, page 17:

"On motion of Mr. Friedlander, seconded by Mr. Howard, Messrs. "Bensley and Chapman were appointed a committee to take the nec- "essary steps to obtain for this company the right to connect the

"Fresno slough with Summit lake and Tulare lake, the original "company for reclamation of those swamp lands having failed to "fulfil the terms of their charter."

487 Minutes of May 7, 1872, page 29.

"Upon motion of Mr. Friedlander, seconded by Mr. Chapman, it "was ordered that the chief resident engineer, upon the comple- "tion of the work on which the Chinamen under his charge "are now engaged, shall immediately transfer the force to the pro- "posed canal from Tulare lake, and commence active operations in "the construction of said canal."

In the same minutes.

"The chief consulting engineer informed the board that he pur- "posed to leave for Europe during the present week; and upon "motion of Mr. Friedlander, seconded by Mr. Rose, the executive "and finance committee were authorized to enter into such arrange- "ments with him for the provisional sale of forty thousand shares "of the capital stock of the company as may in their judgment be "expedient."

Minutes of June 3, 1872, page 31.

"2. The board then proceeded to consider the best starting point "for the canal from Tulare lake, under existing circumstances, and "on a motion from Mr. Rose it was agreed that Mr. Stangroom be "authorized, when his working force is ready, at a point about "Blakeley's where the cutting will leave the slough and be in dry "ground."

(It is admitted that, by order of the company, Mr. R. M. Brereton went to Europe before the end of 1872, with a view *of*, among other things, to dispose of some of the company's stock, namely, 40,000 shares, and that his mission was unsuccessful. The admission
488 is made for the purpose of saving time in reading the minutes upon that subject.)

Mr. STONESIFER: I offer in evidence the minutes of August 20, 1872, page 34:

"2. The members of the board then proceeded to discuss what "force of men should be continued at work at the canal from "Tulare lake, as Mr. Stangroom reported the men were leaving "every day.

"Mr. Howard proposed, and was seconded by Mr. Chapman, that "Mr. Stangroom be instructed to continue the present force of "Chinamen at the same wages they are now receiving on the line of "canal from Tulare lake. Carried unanimously, and Mr. Stan- "groom received his instructions accordingly then and there."

Minutes of August 29, 1872, page 35.

"3. Mr. Friedlander, seconded by Mr. Moss, moved that the con- "tract be recorded in the recorder's office, Millerton, Fresno Co.

"Carried. It was also resolved that the gen'l superintendent be "directed to cause the present engineer corps, headed by Mr. Mason, "to run the lines for the distributing ditches on the 6000-acre tract, "and immediately thereafter continue the line of canal from Tulare "lake to tide water at Antioch. Carried unanimously."

(It is admitted that on January 21, 1873, the trustees started the project of selling 75,000 shares of the stock of the corporation of complainant, held by the stockholders in blocks of 500 shares or less, to the people of California, the purpose being to invite
489 the people to participate in this corporation, and the project to sell that amount of stock failed.

It is also admitted that the 75,000 shares of stock referred to, constituted in whole or in great part the stock already held by the stockholders of the corporation and *in* which they agreed, in case the project should be successful, to surrender for that purpose.)

Mr. STONESIFER: I offer in evidence the minutes of January 21, 1873, page 55:

"2. On motion of Mr. C. Lux, seconded by Mr. A. H. Rose,

"Resolved, That as this company, in the midst of one of the sea- "sons of drought which periodically visit this rich & productive "portion of the State, commenced this enterprise as a permanent "relief, & having expended a large amount of money, now ask for "Government assistance to a work not second in importance to "any public enterprise ever undertaken on the Pacific coast.

"This company proposes to construct about 300 miles of canal for "irrigation & commercial purposes, 40 miles of which are already "built, and its waters are eagerly sought after by the inhabitants of "the locality. The size of the canal is 50 feet wide, and carrying 4 "ft. of water. They ask from the Federal Government the proceeds "of the sale of two of the even sections of the public lands adjacent "to the odd sections in the several counties in the valley which "have been granted to the Western Pacific & to the Southern "Pacific Railroad Company, for every mile of canal of this
490 "capacity where completed.

"On motion of Mr. Friedlander, seconded by Mr. Chapman,

"Resolved, the shareholders of this company, desiring the co- "operation of the public press & their fellow-citizens in the rapid "completion of this great enterprise, without the aid of foreign "capital, hereby invite the people of this State to subscribe to the "capital stock of the company on the same basis & price as the "original subscribers.

"It was also unanimously resolved that the following resolution "be signed by the president and published in all the San Francisco "papers for one month, viz:

"Resolved, That, in order to secure a co-operation of the citizens of "California in one of the most important works for the benefit of "the agricultural and commercial interests of the State, the president "is hereby instructed to open books for the subscription of 75,000 "shares of the 100,000 shares, of $100 each, capital stock of the

"company, at the present cash cost of this work now done. No sub-
"scription to be received for more than 500 shares.
"Notice is hereby given, in conformity with the above, that books
"of subscription for the 75,000 shares are now open at the office of
"the company, No. 320 California street, room 9, during business
"hours, for thirty days. Capital stock, $10,000,000, divided into
"100,000 shares, of $100 each.
"About 40 miles of canal are completed, and supply water for
"irrigating lands bordering on the canal.
491 "Surveys are made from Tulare lake to near Antioch, say
"200 miles, and work progressing.
"The company has no debts. For further particulars and terms
"of subscription, apply at the office of the company."

Minutes of May 8, 1873, page 68.

"4. It was then discussed as to what should be the price of water
"for the people using it, along the line of the company's present
"canal for this year. It was eventually resolved that the price for
"this year shall be $1.50 per acre, and 75c. per acre for all land ir-
"rigated but not cultivated."

X Q. 213. Mr. Merritt, I notice that in volume I of the minutes, pages 69, 70 and 71 are not here.

Mr. TREADWELL: The book shows for itself. There never were any such pages. We call attention to the fact, in that connection, that the numbers of the pages are printed on the book, and that the book shows it was simply mispaged; that no leaves have been extracted between pages 68 and 73.

Mr. STONESIFER: It does show they have been extracted, because it is the way they are sewn in.

Mr. TREADWELL: There is the original binding of the book, and the book is open to the inspection of the court. More than that, we call attention to the fact that pages 68 to 73 read continuously in the minutes.

The WITNESS: Was I asked to make a reply?

Mr. STONESIFER:

X Q. 214. I asked you if you knew anything about it.
492 A. I did not know it was a fact. I have never noticed it, and only know it now from your say-so.

Mr. STONESIFER: I offer in evidence the minutes of June 26, 1873, page 76:

"4. A letter from Mr. Bensley, respecting his unassessable stock,
"was read and ordered spread on the minutes, which is as follows:

"SAN FRANCISCO, *June 17th*, 1873.

"R. M. Brereton, Esq.

"DEAR SIR: In reply to your favor of June 4th, I have to say
"that I have seen the different persons interested in the fifteen
"thousand shares of the San Joaquin & Kings River Canal & Irri-

"gation Company, and after conference with them I hereby offer to
"you all of said shares at four 50/100 dollars per share in gold coin,
"said offer to remain open to you till 31st July, 1873. Provided,
"however, and upon this condition only—that Messrs. Chapman &
"Friedlander bind themselves to said company to give the subsidy
"of two 50/100 dollars per acre on all of their lands susceptible of
"being irrigated below the present canal & its extensions. You in-
"formed me they are willing to do this in case the above unassess-
"able stock could be secured on the terms I have herein offered.

"Yours respectfully,

"(S'd) JOHN BENSLEY."

493 Minutes of September 25, 1873, page 84.

"3. Mr. Moss informed the directors that he was anxious to have
"something settled respecting the subsidies to be obtained from the
"farmers in the San Joaquin valley & offered the following resolu-
"tion:

"Resolved, That the president be authorized to make arrange-
"ments with Messrs. Blackwell & Harris to procure subsidies from
"the farmers and land-owners in the valley along the line of the
"canal for which they will receive one-third cash when the subsidies
"are signed, the balance on the completion of the canal.

"Carried unanimously."

Minutes of November 28, 1873, page 88.

"2. It was moved by Mr. Howard & seconded by Mr. Bensley
"that the alterations made in the subsidy agreement & signed by
"Messrs. Friedlander, Lux & Chapman, respecting the twenty-six
"thousand acres between Los Banos & Orristimba creeks, made by
"the president, be fully authorized by the board."

Stockholders' meeting of December 1, 1874, page 133.

"Mr. Bensley asked the attention of the meeting, and said that he
"felt obliged to reply to certain misrepresentations in the report of
"the chief engineer, although he regretted very much the necessity
"of doing so. He had noticed a statement that in assuming the
"debts of the former Co., this Co. had paid to them a much larger
"sum than such liabilities really amounted to. This he regarded
"as false, as the books would show, and a committee appointed
494 "at that time to examine them had certified to their correct-
"ness. Secondly, it was stated that up to the 9th of May,
"1873, the canal was a mere 'artificial slough,' and all the work
"which was done previous to that time was of no real value to the
"company. In answer to this he would say that the canal at that
"date was as good in every respect, for all practical purposes, as it is
"today. Again, it was stated that there had been a waste in the
"management of the affairs of this company, amounting to $350,000.
"He thought it very likely that this might be true, but, if so, it had
"been caused by Mr. Brereton, the chief engineer, who had been in

"charge of the canal ever since his appointment, Oct. 19th, 1871, "had always carried out his own plans, and had always had every- "thing at his command that he desired.

"Mr. Brereton replied that he held correspondence of Mr. Bens- "ley, as president of the Co., which would show that he was not "responsible for the management of the canal affairs until he took "charge as business manager, May 8th, 1873, after his return from "Washington, and said correspondence would also show that Mr. "Bensley was the responsible party up to that date.

"This caused a long discussion on past affairs, and Mr. Bensley "finally made a motion that a committee be appointed to investi- "gate this whole matter, and that the election of trustees be post- "poned until they report; thought it eminently proper that this "should be done, and stated that he could conclusively prove to
"said committee that Mr. Brereton, as engineer, had made
495 "many mistakes, which had cost the company a great deal
"of money. And, in regard to the am't paid to the old com- "pany, if it could be shown that they had received a larger am't "from this Co. than they were entitled to, he would agree to refund "every cent of it.

"Mr. Bensley's motion was seconded by Mr. Simmons. Mr. Luning "thought that said investigation should be made, but saw no reason "why the election of trustee should be postponed, as it could be "done equally well by the new board.

"Mr. Friedlander coincided with Mr. Luning.

"The president ruled Mr. Bensley's motion out of order, as there "was a former motion before the meeting."

I offer in evidence the minute order of December 31, 1874, page 141:

"A communication from Mr. Brereton was read, dated 29th De- "cember, in reference to am't expended on construction acc't by "this Co. and by the former Co., and giving it as his opinion that the "15,000 shares of unassessable stock paid to the old Co. was an excess "of what was legally due to them, and that the same might be re- "covered.

"On motion of Mr. Chapman, the communication was received, "and laid upon the table."

In connection with that minute order, I offer in evidence the report of Mr. Brereton there referred to, and ask that it be marked "Respondents' Exhibit D."

(Marked "Respondents' Exhibit D.")

I offer in evidence minute order of May 27, 1875, page 157:

"Mr. Friedlander moved, seconded by Mr. Chapman, that
496 "the president be authorized to continue the work on the Tu- "lare Lake canal, at an expense not exceeding twenty-five "thousand dollars during the present year. Carried."

Minutes of September 1, 1875, page 167.

"The president reported that about $6000 had been thus far ex- 'pended upon the Tulare Lake canal this season, and said that he

"supposed the policy of the company would remain the same as to "expending $25,000 thereon during this year."

Minutes of May 26, 1876, page 187.

"Mr. Friedlander moved, seconded by Mr. Walker, that the ac- "tion of the president in authorizing the prosecution of Mr. Henry "Miller for tearing down the company's fence, be fully approved, "and that the president be directed to prosecute all trespassers ac- "cording to law. Carried unanimously."

Minutes of June 20, 1876, page 189.

"The minutes of the last meeting were read. Mr. Lux said he "thought the trustees acted hastily at that meeting, and that their "proceedings showed malice against Miller & Lux, and should not "appear upon the records. After some discussion, Mr. Friedlander "made a motion that the minutes be approved as read, seconded "and carried, Mr. Lux voting No.

"Mr. Moss said that Mr. Miller, with his att'ys, Mr. Mastick and "Mr. Bergin, had called upon Mr. Nourse on the 16th inst., and an "application had been drawn up, signed by Miller & Lux, for a "temporary supply of water. Mr. Friedlander said that he had "read the application and thought Mr. Nourse should be consulted "further in reference to it; as he is out of town, he would
497 "move that it be laid upon the table. Carried."

Minutes of May 1, 1877, page 208.

"On motion of Mr. Walker, Mr. Northam was elected chairman "of the meeting, both the president and vice-president being absent.

"An application was read purporting to be from Miller & Lux, "signed 'Miller & Lux, p. Bolton,' & dated Apr. 30th, for water to "overflow grass lands about three miles north of Firebaugh's. After "discussion, it was moved by Mr. Walker that the application be "rejected, because said application is not made in the form pre- "scribed by the rules & regulations of this corporation, and for the "further reason that it purports to be made under a contract which "this corporation does not recognize as giving said applicants any "rights in regard to water for irrigation subsequent to the 1st day "of Aug., 1874. Seconded and carried unanimously.

"On motion of Mr. Chapman, seconded by Mr. Walker, it was "resolved, that this company is willing to permit parties to have "water this summer to irrigate their uncultivated grass lands at "special rates, not less than $1.25 U. S. gold coin per acre, and that "the superintendent, Mr. Coffman, is authorized to so agree with "them and accordingly permit such use of water. But this is not "to be deemed or taken to be an admission of any rights claimed "by any such party or parties under any alleged contract with this "corporation, nor of any construction of such contract claimed by "such party or parties."

498 (It is admitted that on the 4th day of December, 1877, at the stockholders' election held that day, a board of directors

was elected, a majority of whom were nominees of Miller & Lux, and they have had a majority of the board of directors since that time.)

Mr. STONESIFER: I offer in evidence minutes of the trustees' meeting of December 5, 1877, page 231:

"SAN FRANCISCO, WEDNESDAY, *December 5th*, 1877.

"Pursuant to the call of the president, a special meeting of the "board of trustees was held this day at the company's office at 1 "p. m.

"Present, Messrs. Sedgley, Lux, Miller, Reese, Crim & Center, "trustees. Also Mr. Mastick.

"Absent, Mr. Potter.

"The reading of minutes was dispensed with.

"Mr. Center presented the following:

"Resolved, That the president be & hereby is authorized and di- "rected to proceed with the construction of the Tulare Lake canal "so as to connect the same with Tulare lake, and so that the waters "of the lake shall be made available for the purposes of this com- "pany. Seconded by Mr. Lux, and carried unanimously.

"The following resolution was submitted by Mr. Reese, who moved "its adoption:

"Whereas, the San Joaquin & Kings River Canal & Irrigation "Company has sold its personal property which was upon the land
"known as the company's Canal farm, leased of Miller & Lux,
499 "by a written lease dated August 14th, 1872, and said lease
"will expire on the first day of January, A. D. 1878.

"And it being for the interest of the company that said land should "be cultivated during the coming season, and that the water of the "company be used thereon for the purpose of irrigation,

"And it appearing that Miller & Lux are willing to take imme- "diate possession of said land for the purpose above stated, reserv- "ing to themselves all rights and claims which they otherwise may "have by virtue of said lease,

"It is therefore resolved, that the possession of said land be im- "mediately delivered to Miller & Lux, but without prejudice to any "rights or claims which said company may otherwise have by virtue "of said lease, and without prejudice to Miller & Lux.

"The motion was seconded by Mr. Center, and carried by the fol- "lowing vote: Ayes, Messrs. Sedgley, Reese, Crim, & Center (4). "Noes, none. Messrs. Lux and Miller not voting.

"Mr. Lux then submitted a proposition on behalf of Miller & "Lux, that the value of the ditches & improvements on the com- "pany's Canal farm be at once appraised, in accordance with the "terms of the lease, and naming Mr. H. G. Tanner to represent "Miller & Lux. After some discussion, Mr. Crim moved that the "proposition of Miller & Lux, to have the value of the ditches on "the Canal farm appraised at once, be accepted, and that Mr. R. M. "Wilson be authorized to act as appraiser on behalf of the company.
"Seconded by Mr. Reese, and carried. Ayes, Messrs. Sedgley,
500 "Reese, Crim & Center (4). Noes, none. Messrs. Miller and
"Lux not voting.

"Mr. Miller said that the company had not complied with its "agreement in regard to sowing the Canal farm to alfalfa; that "about 1400 acres had been sown which was afterwards neglected "and perished, and that about 600 acres more which had attained "a good stand was rooted up by hogs. He said that Miller & Lux "claim the full am't of the stipulated damages, & thought the matter "should be settled now by the appointment of one man by the com- "pany, and another by Miller & Lux, to appraise the damages. Mr. "Center made a motion that Mr. R. M. Wilson be instructed to ex- "amine and report on the condition of the farm; as to how much of "the land is capable of producing alfalfa; how much has been put "in alfalfa; and how much is *now* in alfalfa. Motion seconded by "Mr. Reese & carried. Ayes, Messrs. Sedgley, Reese, Crim & Center. "Noes, none. Messrs. Miller and Lux not voting."

Then, on the same page:

"On motion of Mr. Reese, the following resolution was adopted:

"Resolved, That Henry Miller be and hereby is authorized to dis- "charge any and all employees of the company now employed by "the company upon and now operating the canal or doing any work "thereon. Also to employ any persons for the company whom he "thinks proper. Also to settle all claims for wages or supplies, and "draw drafts upon the president therefor.

"There being no further business before the meeting on motion "adjourned.

"F. L. PALMER, *Sec'y.*"

501 Minutes of April 25, 1878, page 243.

"San Francisco, Thursday, *April 25th*, 1878.

"The regular monthly meeting of the board of trustees was held "this day at the company's office at 1 p. m.

"Present, Messrs. Sedgley, Potter, Center & Rosenberg.

"Absent, Messrs. Miller, Lux & Crim.

"Minutes of meetings of Jan. 31, Feb. 28, M'ch 28 & 29, read and "approved.

"The president said he had received a communication from Miller "& Lux, dated April 5th, 1878, claiming $20,000 damages for failure "on the part of the company to leave the tract leased of them Au- "gust 14, 1872 (known as the company's Canal farm) with a growing "crop of alfalfa thereon at the expiration of the lease. The letter "was read. Mr. Sedgley gave a detailed explanation of the matter, "and said to have it thoroughly understood he would ask the sec'y to "read the documents on file relating thereto. The lease was read, "and the reports of the appointed referees, Messrs. Wilson and Tan- "ner, received at meeting of Dec. 27, 1877. The report of J. M. "McPike, subsequently sent up by the president to examine the "farm, was also examined, and two letters from Mr. Henry Miller, "dated March 30, 1878, one claiming $2,000 damages from the com- "pany for having grazed the alfalfa field close just prior to turning "it over to Miller & Lux for pasturage Nov. 1, 1877, as provided in "the lease. The other letter was in explanation of an offer of $7,500

"made by Mr. Miller to Mr. Stangroom, sup't, in payment for
502 "the ditches and improvements on the farm.

"Mr. Center moved, seconded by Mr. Rosenberg, that the "report of J. M. McPike, dated Jan'y 3rd, 1878, be received and "placed on file. Carried.

"On motion of Mr. Center, it was ordered that the reports of "Wilson & Tanner, and of J. M. McPike be spread upon the min-"utes.

"*Reports of Wilson and Tanner.*

"'The undersigned referees, appointed by Miller & Lux and the "'San Joaquin & Kings River Canal & Irrigation Company, to ap-"'praise the value of the improvements, levees, ditches, and irriga-"'tion works on the lands of Miller & Lux and heretofore rented by "'the San Joaquin & Kings River Canal & Irrigation Co., after a "'careful examination, do appraise the value of said improvements, "'levees, etc., as follows, to wit:

"'Buildings, corrals, &c., at Home place	$2000.
"' " Bailey camp	100.
"' " Barley field camp	50.
"'Six and one-half miles of primary ditches	325.
"'Twenty-six and one-half miles of secondary ditches	663.
"'Twenty-eight set- of water gates	390.
"'Twenty-eight single water gates	195.
"'Seven miles of levee	175.
"'Six miles of Bowan ditches	300.
"'Boxes in Bowan ditches	22.
"'Seven bridges	280.
"'Total valuation	$4500.

"'Dec. 12, 1877.

"'R. M. WILSON,
"'H. G. TANNER,
"'*Referees.*'

503 "STATE OF CALIFORNIA, }
"*County of Merced.* }

"On this 14th day of December, A. D. 1877, before me, S. A. "Smith, a justice of the peace in and for the county of Merced, per-"sonally appeared R. M. Wilson and H. G. Tanner, known to me "to be the persons whose names are subscribed to the annexed in-"strument, who each acknowledged to me that they executed the "same.

"In witness whereof, I have hereunto set my hand and affixed "my private seal (having no seal of office) the day and year in this "certificate first above written.

"S. A. SMITH, [SEAL.]
"*Justice of the Peace.*

"'Whereas, by the terms of a certain lease made by Miller & Lux "'to the San Joaquin & Kings River Canal & Irrigation Company, "'whereby they leased to said canal & irrigation company, five "'thousand acres of land, more or less, in Fresno county, State of "'California, and known as the "Canal Company's farm," for the "'term of five years from the date of said lease, and at the expira- "'tion of said term to leave said land in growing alfalfa, and "'whereas said lease has expired and said canal & irrigation com- "'pany have not left said land in growing alfalfa, we the under- "'signed persons, appointed by said Miller & Lux and said canal "'& irrigation company respectively to appraise the value of im- "'provements, ditches and levees on said land, also to report "'whether, in their judgment, said land will grow alfalfa. Both "'of said referees having had much experience in growing
504 "'alfalfa, after a personal inspection of said land, do report "'that, in their judgment, said land will grow alfalfa, pro- "'vided said land is tilled and sown in a farm and workmanlike "'manner, but find no growing alfalfa on said land.

"'Signed this 14th day of December, A. D. 1877.

"'R. M. WILSON.
"'H. G. TANNER.'

"'STATE OF CALIFORNIA, }
"'*County of Merced.* }

"'On this 14th day of December, 1877, before me, S. A. Smith, a "'justice of the peace in and for the county of Merced, personally "'appeared R. M. Wilson & H. G. Tanner, known to me to be the "'persons whose name- *is* subscribed to the annexed instrument, who "'each acknowledged to me that he executed the same.

"'In witness whereof, I have hereunto set my hand and affixed "'my private seal (having no seal of office) the day & year in this "'certificate first above written.

"'S. A. SMITH, [SEAL.]
"'*Justice of the Peace.*'

"'*Report of J. M. McPike.*

"'Report made by John M. McPike on the value and estimate "'and condition of what is known to be the Canal farm of the San "'Joaquin and Kings River Irrigating Canal Company, this 3rd "'day of January, A. D. 1878, viz:

"'1st, the valuation of the division called the Bailey farm, No. blank on plot of said farm.

505 "'*Valuation of Improvements.*

"'Small house & corral & shed..... $65.

"'No. of acres of land in said division:

"'1560 acres total irrigation,

"'580 acres sown to alfalfa, but destroyed in part by hogs, almost "'or quite valueless and not to be considered as set in alfalfa on

"'a/c of being destroyed by hogs, rooting or pulling the same out "'by the roots, rendering it without but partial value.

"'2nd. Of said 1560 acres there *is* about 400 acres not suitable to "'make a good fair stand of alfalfa, and about 1160 acres of the "'1560-acre tract irrigatable & susceptible of raising a good crop of "'alfalfa or wheat or barley.

"'*Division No.* 1—*Value of Improvements.*

"'1st. Stable..... value.....	$200.
"'2nd. Wash-house "	25.
"'3rd. Chicken-house	10.
"'4th. Blacksmith shop, sheds, &c.	125.
"'5th. Storehouse	40.
"'6th. Men's house, for laborers.....	30.
"'7th. Kitchen " "	70.
"'8. Dwelling boarded & battened rough.....	300.
"'9. Fencing & posts in corrals, garden, &c.	300.
"'Total	$1100.

"'No. of acres in said division, 1710 A.

"'Non-irrigable 96 A. in said tract, all irrigatable and sown ex- "'cept 96 A. 1614 irrigable to alfalfa, but wholly valueless on a/c "'of being rooted and destroyed by hogs, except small patches which "'*is* only detrimental to said land, and no value.

506 "'*Division No.* 2 *or* 2*nd Division.*

"'1740 acres. Irrigable, 1451 acres. No alfalfa sown. Total "'irrigable suitable for growing alfalfa, but never planted in alfalfa. "'Improvements, none.

"'*No.* 3.

"'Improvements corral & shanty.....	$25.
"'No. of acres irrigable.....	943 acres.
"'Non-irrigable.....	757 do.
"'Total in field.....	1700 acres.

"'Whole length of secondary ditches in the foregoing 4 "'divisions and value per miles:

"'Miles total, 8¼, at $100 per mile.....	$825.
"'Gates & boxes in same valued	250.

"'Primary or small ditches:

"'No. of miles 34, at $30 per mile.....	1020.
"'Length of levee 2 miles to hold water.....	250.
"'6 miles of Bowan ditch, $100 p'r mile	600.
"'Regulating boxes, 7, at $3 each	21.

"'Mr. Jos. Sedgley to the president of the San Joaquin Irrigating "'Canal Co., known or called the San Joaquin and Kings River "'Canal Co., situated in the county of Merced, State of California.

"'SIR: After going over and surveying said ditches and its tribu- "'taries, and also the improvements above mentioned, and fairly "'and impartially valueing and representing in the above bills "'enumerated and footing up same carefully, find the total am'ts of "'ditches, lengths and value in present condition as above
507 "'stated, and am willing to verify to same according to the "'best of my judgment and report, for which I hope will be "'entirely satisfactory to all concerned.

"'Signed and sealed and subscribed to by me, this 3rd day of "'January, A. D. 1878.

"'(Signed) JNO. M. McPIKE, [L. S.]
"'*Appraiser for the San Joaquin Irrigating*
"'*Canal Co. of Merced Co., California.*
"'(Signed) JNO. M. McPIKE.'

"Mr. Center moved that the report of the referees Wilson and "Tanner, received formally at meeting of Dec. 27, 1877, be con- "firmed, & that the president be authorized to settle with Miller & "Lux on the basis of that report. Seconded by Mr. Rosenberg and "carried.

"Mr. Center moved that the $2000 claim of Miller & Lux, as per "letter of Henry Miller, dated M'ch 30, 1878, be rejected. Seconded "by Mr. Rosenberg, & unanimously carried.

"Mr. Rosenberg then submitted the following, and moved its "adoption:

"Whereas, by reports on file of R. M. Wilson and H. G. Tanner, it "appears that the terms of lease with Miller & Lux, dated August "14, 1872, have not been complied with, and that the company is lia- "ble according to its terms for the liquidated sum of $20,000, gold "coin to Miller & Lux.

"Resolved, That the sum of $20,000 be paid to Miller & Lux in "full of all claims of any kind whatever arising under or through "said lease, or all or any of its covenants. Seconded by Mr. Center, "and carried unanimously.

"There being no further business before the meeting, on motion "of Mr. Potter, adjourned.

"F. L. PALMER, *Sec'y.*"

508 Minutes of the stockholders' meeting of December 3, 1878, page 259.

"Mr. Miller said the amount expended on the company Canal "farm was no doubt astonishing, and the reason of it was that the "men formerly placed in charge of it were incompetent. Miller & "Lux had paid $4500 for the ditches & improvements, which were "not worth $1500; in fact, the ditches were worse than useless, and "he had built new ones, disregarding the old ones entirely and "plowing right across them. He hoped the committee would be "appointed."

Minutes of the board of trustees of October 30, 1879, page 272.

"Mr. Center, chairman of the committee appointed at last meeting, "said the committee had made a careful examination into the case "of the Company *vs.* Miller & Lux, and presented their written re- "port, which he read. Mr. Potter moved that the report be received "and placed on file, motion seconded and carried.

"Mr. Rosenberg then offered the following resolution, and moved "its adoption:

"Whereas, there is a suit pending in the district court of the nine- "teenth judicial district of the State of California entitled The San "Joaquin and King's River Canal and Irrigation Company *vs.* Henry "Miller and Charles Lux, in which case the said defendants have "filed a cross-complaint against said plaintiffs;

"And whereas, it is desirable to settle and compromise said suit "and cross-action;

509 "And whereas, it is important to this company that it should "have a right of way over the lands of said Miller and Lux "for its canal of a width of one hundred feet on each side of the "center line of said canal, which they are willing to grant;

"And whereas, the owners of more than three-fourths of the stock "of this corporation acquiesce in a settlement upon the basis em- "bodied in this resolution;

"Therefore, resolved, that this company hereby expresses its will- "ingness to compromise and settle all matters in difference with said "Miller and Lux as follows:

"1. Said Miller and Lux shall by deed convey to this company a "right of way for said canal over their lands where said canal has "been constructed, of the width of one hundred feet on each side of "the center line of said canal.

"2. That subdivision fifth of the contract referred to as Exhibit "'A' in the complaint filed in said action, shall be construed to mean "that this company will deliver water thereunder at its regular rates, "not exceeding one dollar and twenty-five cents ($1.25) per acre per "crop, provided the crops are cut, but in case the alfalfa lands should "be pastured, then each supply of water of the usual quantity sup- "plied to produce a crop shall be deemed to be such a supply as will "entitle a charge to be made therefor, the same as if a crop shall be "cut, and said subdivision shall likewise apply, with the proviso "aforesaid, to said Miller and Lux, their tenants, employees, heirs,

"executors and administrators, and shall run with the land so

510 "long as this company exists to the extent of thirty-three "thousand three hundred and thirty-three and one-third "(33,333⅓) acres, but shall not apply to the grantees of said Miller "and Lux, nor to the grantees of their heirs, executors or adminis- "trators; and subdivision tenth of said contract shall apply to all "domestic animals owned, pastured or cared for by Miller and Lux, "their tenants, employees, heirs, executors or administrators.

"3. That the conditions and stipulations above referred to shall "be placed in such proper form as shall be binding upon this com- "pany and said Miller and Lux.

"4. And that thereupon, said action and cross-action shall be dis-
"missed, each party releasing the other from all claims and demands,
"referred to in said action and cross-action.
"5. That the president & secretary are hereby authorized to carry
"this resolution into effect.
"Mr. Bolton seconded Mr. Rosenberg's motion, and it was carried
"unanimously."

Minutes of the stockholders' meeting of December 2, 1879, page 277.

"The annual report of Jos. Sedgley, pres't, was then read, & on
"motion of Mr. Rosenberg, received and ordered on file.
"The president then called for the report of the committee of the
"stockholders referred to in his report. Mr. Baum replied that he
"& Mr. Wilmerding, in visiting the canal, did not understand that
"they were acting as a committee; the president & Mr. Lux
511 "were going up, and on invitation, they joined them. He
"was, therefore, not prepared with any report. However, he
"could say that he was much gratified with what he saw; every-
"thing seemed to be managed economically, so far as they could
"judge, and better they would admit than under the old board;
"more than that he was not prepared to say. The president thanked
"Mr. Baum, and said he was sorry that a written report had not been
"made. He then asked if any of the stockholders wished to ask any
"questions, or make any remarks.
"Mr. Baum said that he desired to enter a protest in the name of
"J. Mora Moss against the settlement made with Miller & Lux of
"the old suits, referred to in the president's report, and wished a
"note of it made on the minutes.
"The president said he would like to know the grounds of the
"protest. Mr. Baum replied that he would make a written pro-
"test hereafter, but that he wished now to reserve all his rights,
"& wished to make an examination of the matter upon the arrival
"of Mr. Moss, who is on his way from the East. He said he did
"this, not for himself, but as representing Mr. Moss, who had so in-
"structed him. The president said the papers were all on file, and
"at Mr. Baum's service at any time. He then explained the nature
"of the settlement at some length, and said the new arrangement
"with Miller & Lux did not *change* the old contract, but *defined* it."

Minutes of June 27, 1881, page 302.

"On motion of Mr. Baum, seconded by Mr. Lux, it was
"Resolved, That the company's supt. be authorized to sell water
"for summer crops of corn, pumpkins, &c. under rule 9 of
512 "the rules & regulations, at $1.50 per acre.
"There being no further business, on motion adjourned.
"F. L. PALMER, *Sec'y.*"

Trustees' meeting of November 1, 1881, page 305.

'The president reported as follows: * * * That he had set-
'tled the Co.'s claim against W. S. Chapman, as authorized, receiv-

"ing from him $400 in money; his deed of right of way for the ex-
"tension; and one hundred shares of the stock of the company,
"which he had had placed in his own name as trustee for the com-
"pany.

"He asked what disposition the board wished to make of the 100
"shs. of stock, and stated that Mr. Palmer, sec'y, had offered $2.75
"per share for it.

"On motion of Mr. Baum, seconded by Mr. Wilmerding, the fol-
"lowing resolution was passed:

"Resolved, That the one hundred shares of company's stock re-
"ceived from Wm. S. Chapman be and hereby is sold to F. L. Palmer,
"at $2.75 per share, and the president & sec'y are hereby author-
"ized to transfer the same to him on receipt of $275."

Stockholders' meeting of December 6, 1881, page 307.

"The president said he had made no written report. That the
"company had now succeeded in placing its property in a shape
"where it will pay a small revenue, at least, to the stockholders, and
"perhaps written reports are not so requisite now as they were at a
"time when they were considered necessary to keep up the courage
"of the stockholders; he thought they would rather take
513 "dividends than the report of any engineer or president they
"had ever had. Seriously, he felt that while he might have
"attempted to make predictions as to the future, he considered it
"useless to do so, and he had no special recommendations to make
"at this time. He would say that, in his opinion, with careful man-
"agement the canal will pay a fair revenue on what it ought to
"have cost. There is one danger to the company which should be
"carefully watched and guarded against, and that is the appropria-
"tion of water by certain parties higher up on the San Joaquin
"river, about 45 miles above the Co.'s head-works. Should this
"scheme prove a success, and should it fall into the hands of parties
"disposed to annoy this company and interfere with its supply of
"water, they could most easily do so. He said that Mr. Miller had
"given this matter some attention, and he would like to have an
"expression of his views concerning it."

Trustees' meeting of September 27, 1884, page 346.

"Resolved, That Henry Miller be and is hereby authorized to
"discharge any and all employees of the S. J. & K. R. C. & I. Co.
"now employed by the company upon, and now operating the canal
"or doing any work thereon. Also, to employ any persons for the
"company whom he thinks proper. Also, to settle all claims for
"wages or supplies, and draw drafts upon the president therefor.
"Also, to order done any work upon the canal that may, in his
"judgment, be necessary, such as cleaning out the canal bed, & mak-
"ing repairs, and, in general, to take any necessary measures to the
"end that the canal may be placed in such condition that a full sup-
"ply of water may be available for delivery along its entire
514 "length, and that it may be so maintained.

"The resolution was seconded by Mr. Lux, and unanimously adopted."

Then, on page 347, of the same minutes:

"Resolved, That a parallel canal be constructed from the 19th "mile point (approximately) to the 26th mile point (approximately) "of the main canal and on the lower side thereof, connecting the "lower extremity of the so-called parallel canal No. 1 with the "upper extremity of the so-called parallel canal No. 2. The dimen- "sions of the proposed parallel canal shall be as follows: Surface "width fifty-four (54) feet, bottom width thirty (30) feet, vertical "depth from top of bank to bottom of canal, four (4) feet, grade one "(1) foot to the mile.

"Resolved, That the president of this company be and is hereby "authorized to execute a contract in the name of this company with "Miller & Lux for the excavation and earthwork for the parallel "canal contemplated by the foregoing resolution, at the rate of "fifteen cents (15c.) per cubic yard, and that Mr. Chas. Barrett, or "some other competent engineer, be employed to compute the num- "ber of cubic yards to be paid for on the completion of the work.

"The motion to adopt was seconded by Mr. Potter, and carried "unanimously."

Trustees' meeting of February 16, 1885, page 358.

"Mr. Wilmerding said that some of the stockholders had spoken
"to him on the subject of the company's expenses. He thought
515 "the time had come to economize. He believed that a man
"could be found to do the work of the secretary for $100, "whereas the company is now paying $250 per month.

"It was stated in reply that the salary of the secretary is $200 per "month, not $250; that it had long been understood that this salary "was paid, not only for the services of the secretary, but also as an "offset for the *the* services of Mr. Miller, which were of great value "to the company, but for which he received no compensation fur- "ther than that Miller & Lux were permitted to utilize the services "of the company's secretary when he was not engaged in the com- "pany's work.

"Mr. Wilmerding and Mr. Woods gave it as their opinion that it "would be better to pay the secretary only in proportion to the serv- "ices rendered by him to the company, and to pay Mr. Miller "directly for whatever services he might render as a salaried officer "of the company.

"The president expressed a doubt whether Mr. Miller would accept "such a position, but thought the company could not afford to do "without just that executive supervision of its works that Mr. Miller "gives.

"On motion of Mr. Wilmerding, the matter was referred to the "president with instructions to investigate and report upon it to the "board at a future meeting.

"On motion of Mr. Lux, the board then adjourned.

"C. Z. MERRIT, *Sec'y.*"

Trustees' meeting of December 3, 1889, page 421.

"Mr. Allen introduced the following resolution, which was unan-
"imously adopted:

"Resolved, That Henry Miller be and hereby is authorized
516 "to discharge any and all employees of the S. J. & K. R. C.
"& I. Co. now employed by the company upon and now oper-
"ating the canal or doing any work thereon.

"Also, to employ any persons for the company whom he thinks
"proper.

"Also, to settle all claims for wages or supplies, and draw drafts
"upon the president therefor.

"Also, to order done any work upon the canal that may, in his
"judgment, be necessary, such as cleaning out the canal bed, mak-
"ing repairs, and in general, to take any necessary measures to the
"end that the canal may be placed in such condition that a full
"supply of water may be available for delivery along its entire
"length, and that it may be so maintained."

(A recess was here taken until 2 o'clock p. m.)

517 *Afternoon Session.*

C. Z. MERRITT.

Cross-examination resumed.

Mr. STONESIFER:

X Q. 215. Mr. Merritt, the company was engaged in farming land below its canal on its own account between the years 1871 and 1880, was it not?

A. I do not know definitely the dates. I presume those are correct, however. They were engaged in farming a land there for a period, at about that time.

X Q. 216. A period of seven years?

A. Probably about what you *were* name, they were engaged in such operations.

X Q. 217. They were irrigating the land lying below this canal, were they not, on their own account?

A. Yes sir.

X Q. 218. And had it stocked with cattle and horses, and were raising alfalfa, and checked and ditched up?

A. Yes sir.

X Q. 219. What were the losses of the company on that venture?

A. Ledger B, page 53, shows the "Farm A" account as carried forward from Ledger A, amounting to $111,916.49. This account represents operations upon land leased from Miller & Lux and sometimes called the Canal farm, although it should not be confused with the farm which Miller & Lux called the Canal farm, which was a different place.

Mr. TREADWELL:

518 Q. You speak of a balance of $111,916.49. You mean that is the debit balance to that account?

A. That is the debit balance to that account, and it was carried to profit and loss in November, 1886.

Mr. STONESIFER:

X Q. 220. That means there was a loss of that amount of money?

A. Yes sir.

Mr. STONESIFER: In that connection I wish to read in evidence from the minutes, page 259 of Minute Book 1, the remarks of Mr. Miller at a stockholders' meeting as to this business, which are as follows:

"Mr. Miller said the amount expended on the company Canal "farm was no doubt astonishing, and the reason of it was that the "men formerly placed in charge of it were incompetent. Miller & "Lux had paid $4500 for the ditches and improvements which were "not worth $1500; in fact, the ditches were worse than useless, and "he had built new ones, disregarding the old ones entirely, and "ploughing right across them. He hoped the committee would be "appointed."

X Q. 221. Mr. Merritt, this judgment against the company obtained by a man by the name of Lowery, some time during the year 1898, for $22.000, was obtained against the company from damaged resulting from back water from a dam of the company, was it not?

Mr. TREADWELL: We object to it upon the ground that the record in that case is the best evidence.

Mr. STONESIFER: I do not want to incumber the record with that.

Mr. TREADWELL: If you are going to ask any questions
519 about it, we shall insist upon the record in that case going in.

Mr. STONESIFER: All I want is, to take that in connection with this minute entry.

Mr. TREADWELL: If you want anything about it, we shall insist that the record is the best evidence. You fail to produce that record, and we are prepared to produce it.

Mr. STONESIFER:

X Q. 222. I will read you this minute of December 6, 1898, on page 56 of volume II:

"The president stated that one matter which had given him much "annoyance was the suit brought against this company by one "Lowrey, a tenant of J. G. James, upon land between Fresno slough "and the San Joaquin river, some miles above the company's head-"works, to recover damages resulting from inundation of his land "alleged to have been caused by the back water from this company's "dam incident to raising the water to the point necessary to supply 'the new outside canal. Notwithstanding a vigorous and neces-

"sarily expensive defense, and contrary to the confident expectation "of the company's attorneys, Lowrey had obtained a judgment for "$22,000 damages. A motion was pending for a new trial, and if "not granted, the company would take an appeal; in either alterna- "tion, the company's attorneys were confident of ultimate success."

You were secretary at that time, were you not?

A. I was.

X Q. 223. The minutes are in your handwriting, are they?

A. They are.

X Q. 224. Did the matters occur at that meeting, as stated here?

A. Something of that nature occurred. I do not know
520 whether you read the minutes correctly or not. I have not been looking on.

Mr. STONESIFER: I offer this in evidence.

Mr. TREADWELL: That is, just what you have read?

Mr. STONESIFER: Just what I have read.

X Q. 225. The matters occurred at that meeting, as are there stated, did they, Mr. Merritt?

A. They did.

Mr. STONESIFER: I offer the minutes of May 5, 1899, as follows, page 63:

"At the request of the chair, the vice-president stated that the "object of the meeting was to consider the use by Miller & Lux of "the surplus water of the company's canal, and whether Miller & "Lux were entitled to such use without payment therefor; and he "requested Mr. Treadwell, one of the company's attorneys, to make "a statement of the situation.

"Mr. Treadwell stated that, in the suit now pending between the "company and the county of Stanislaus, as to the validity of the "rates fixed by the board of supervisors of that county, the answer "set up that large quantities of water were being supplied to Miller "& Lux, free of charge, and that if that water were charged for, at "reasonable rates, the company would receive a sufficient revenue, "even at the rates fixed by the supervisors. He stated that he had "investigated the matter and had been imformed that the facts were "as follows: That at the time of the commencement of the com- "pany's canal, Miller & Lux were (as they still are) the owners of a
"large body of land on the river, below the dam, having
521 "riparian rights, and which they were accustomed to irrigate "from the river; that these rights conflicted with any diver- "sion of water by the company, rendering it necessary for the com- "pany to acquire these by condemnation or agreement; that these "rights had never been condemned or conveyed to the company, "except that Miller & Lux, by acquiescence, had permitted the "company to divert water into its canal; and that, from the first, "the company had always turned out, on the lands of Miller & Lux, "all the water of the canal, not needed or demanded by its customers "(including Miller & Lux as to their non-riparian and cultivated "lands), and had permitted Miller & Lux to use that water free of

"charge. He further stated that, in the contract of 1872 between "the company and Miller & Lux, no mention was made of any "right to the surplus water, but a special provision was made for "giving them a certain quantity of water free on certain specified "occasions; that various disputes had arisen concerning that con- "tract and the course of dealing between Miller & Lux and the "company, to settle which the company had brought an action "against Miller & Lux, but that no complaint had been made as to "the use of the surplus water; that these disputes had been adjusted "by the contract of November 12, 1879, which was also silent on "this subject.

"Mr. Treadwell stated that, assuming these to be the facts he was "of opinion that the contracts gave Miller & Lux no right to the "use of this surplus water; but that they had never parted with
"their riparian rights to any greater extent than should be
522 "necessary to supply the company's customers; that the
"company, therefore, had no right as against Miller & Lux, "to divert more water into its canal than the needs of its customers "required, and that, whenever there was in the canal any water not "so needed, Miller & Lux had the right, as riparian owners, to the "use of that surplus water. He further stated that, in his opinion, "the company was bound to return its surplus water into the river, and "that if, in doing so, it turned that water on the land of any person, "such person would have the right to irrigate his land with that "water, and could not be made to pay for it.

"He concluded that, therefore, the company had no right to make "any charge against Miller & Lux for this surplus water; but sug- "gested that, as Miller & Lux had elected a majority of the trustees, "the matter ought to be laid before the stockholders for their ad- "vice.

"An informal discussion followed, after which it was moved by "Mr. Ward, seconded by Capt. Martin, that a special meeting of the "stockholders be called for Wednesday, the 17th inst., at 11 o'clock "a. m., for the purpose of presenting to them the statements made "by Mr. Treadwell, and obtaining their advice with relation thereto. "The motion was put, and unanimously prevailed.

"On motion of Mr. Ward, unanimously carried, Messrs. Martin, "Ward and Talbot were appointed as a committee to investigate "the subject, and prepare and submit to the stockholders at said "meeting a statement of the case just presented by Mr. Treadwell. "Upon motion, the board thereupon adjourned to meet at the same "place on Wednesday, the 17th inst., at 10.30 a. m.

"C. Z. MERRITT, *Sec'y.*

523 "*Adjourned Meeting of Trustees.*

"SAN FRANCISCO, CAL., WEDNESDAY, *May* 17, 1899.

"Pursuant to adjournment of 5th inst., the board of trustees of "the San Joaquin and Kings River Canal and Irrigation Company "met this day at the office of the company, at the hour of 10.30 a. m.

"Present, Trustees Allen, Potter, Miller, Martin, Nickel, Talbot "and Ward; the full board.

"President Miller in the chair.

"On motion, the reading of the minutes was dispensed with.

"The committee appointed on 5th inst., to investigate the *the* matter "of the free use by Miller & Lux of the surplus water of the com- "pany's canals, presented a written report which, upon request, the "secretary read to the board. The report was as follows:

"'To the board of trustees of the San Joaquin and Kings River "'Canal & Irrigation Company:

"'The undersigned, appointed by your board a commitee to "'investigate the subject of the free use by Miller & Lux of the "'surplus water of the company's canals, beg leave to report that "'we find the following to be the facts as to that matter:

"'Prior to the construction of the company's dam and canal, "Miller & Lux were, as they still are, the owners of large bodies of "'land fronting on the San Joaquin river, and intersected by sloughs "'connected with the river, and were accustomed to irrigate
524 "'those lands both by the natural overflow of the river and "'sloughs, and by means of dams and other contrivances. "'Their riparian rights, as owners of these lands, were such that the "'company would not have had the right to divert any water from "'the river to their prejudice without their consent, except by pur- "'chase or condemnation. Miller & Lux, however, aided in the "'organization of the company, gave it a right of way through their "'lands, and a subsidy in aid of the construction of the canal, and "'tacitly assented to the diversion of water by the company.

"'No written agreement was ever made on the subject, but we are "'satisfied that their acquiescence in the acts of the company would "'certainly be held to estop them from denying the right of the "'company to take water to the extent of the capacity of the canal.

"'It also appears that at all times from the construction of the "'canal, the company has been in the habit of wasting its surplus "'water on the lands of Miller & Lux, there being no other outlet "'to the river from the canal. This surplus water has always been "'used by Miller & Lux to irrigate wild and uncultivated land, "'and it is probable that they may have derived considerable ad- "'vantage by increase in the growth of feed. For this use of the "'surplus water, no charge has ever been made by the company; "'but whenever Miller & Lux have desired to irrigate any cultivated "'lands, or for the purpose of making any crop, they have always "'paid for the water. Although various disputes have arisen from "'time to time between the company and Miller & Lux, which dis- "'putes led to serious litigation, no complaint has ever
525 "'been made as to Miller & Lux' free use of the surplus "'water, and the various contracts which have been made "'between them and the company have been entirely silent on the "'subject.

"'We are satisfied that the company can have no claim against "'Miller & Lux for this use of the surplus water. We think that

"'the acquiescence of Miller & Lux in the diversion of water by the "'company cannot be supposed to have extended further than the "'actual cause of dealing warranted. We think it extremely doubt- "'ful whether the company could ever have claimed the right, as "'against Miller & Lux, to take more water into the canal than was "'needed for its paying customers. Miller & Lux would have had "'just grounds of complaint if the company had carried its canal "'full at all times and discharged the surplus water into the river "'below their lands. However this may be, it seems plain to us "'that the right of Miller & Lux to have this surplus water free, "'stands on the same basis as the right of the company to divert "'water from the river at all. Both are dependent upon mutual ac- "'quiescence, and a long-continued course of dealing. We, there- "'fore, think that this right, so far as it has been actually exercised, "'is a proper one, and that the company should recognize it.

"'It also appears to us that this use is in various ways advanta- "'geous, even to the company. Some outlet must, of course, be pro- "'vided for surplus water, and, as the company can never know "'what demand there will be for water, it must frequently be neces-
"'sary to carry more water in the canal than will be used.
526 "'As none of the creeks which the canal crosses have any
"'outlet to the river, it would be necessary for the company, "'in case Miller & Lux should refuse to receive the surplus water "'on their lands, to purchase or condemn one or more rights of way "'to the river, and construct channels to carry off the surplus water. "'This would be very expensive, and would probably cost more "'than any revenue that could be derived by the sale of this sur- "'plus water to Miller & Lux.

"'In the suit now pending against Stanislaus county, it is claimed "'by the defendants that Miller & Lux ought to pay for this water, "'and that if paid for, it would very materially enhance the com- "'pany's revenue. In order to put this matter at rest, we think that "'the understanding of the parties as to their respective rights in "'this matter should be reduced to writing, so that no dispute can "'hereafter arise concerning it. We, therefore, recommend the "'adoption of the contract, a copy of which is hereto annexed.

"'San Francisco, May 17, 1899.

"'(Signed) "'D. E. MARTIN,
"'D. HENSHAW WARD,
"'W. H. TALBOT,
"'*Committee.*'

"The following is a copy of the contract attached to the foregoing "report and recommended for adoption:

"'This agreement, made this — day of ——, 1899, by and be- "'tween the San Joaquin and Kings River Canal and Irrigation "'Company, a corporation organized and existing under the laws
"'of the State of California, the party of the first part, and
527 "'Miller & Lux, also a corporation organized and existing
"'under the laws of said State, the party of the second part, "'Witnesseth: That, whereas, prior to the construction of the

"'canal of the party of the first part, Henry Miller and Charles Lux "'were the owners of lands lying along and bordering upon the "'San Joaquin river, and its sloughs, in said State, and lying above "'and below the head of the canal of the party of the first part, and "'were the owners of riparian rights in and to the waters of said "'rivers and sloughs, and had been accustomed to and did actually "'use the waters of said rivers and sloughs which naturally over-"'flowed said lands, and also to take water therefrom by artificial "'means, for the purpose of irrigating said lands and furnishing "'water for their cattle and live stock, and for other domestic uses, "'in accordance with their said riparian rights;

"'And, whereas, said Henry Miller and Charles Lux, for the pur-"'pose of aiding the construction of said canal of the party of the "'first part, did pay to the party of the first part a subsidy in money, "'and conveyed to it a right of way for its said canal, where the "'same passed through the lands of said Henry Miller and Charles "'Lux, of a width of one hundred (100) feet on each side of the cen-"'ter line of said canal, and permitted the party of the first part to "'appropriate and divert from said river through said canal eight "'hundred (800) cubic feet per second of the water flowing in said "'river;

"'And, whereas, at all times since said appropriation was made "'by the party of the first part, said Henry Miller and Charles Lux,

"'and said Henry Miller, as the survivor of them, and the
528 "'party of the second part (as the successor in interest of
"'said Henry Miller and Charles Lux) continued, as said "'riparian owners, to use the overflow waters of said river and "'sloughs upon said lands for the aforesaid purposes, and also to "'use, for the purpose of irrigating uncultivated land, and furnish-"'ing water for their live stock and for other domestic purposes, and "'with the consent of the party of the first part and without any "'charge therefor by it, the surplus water running in said canal not "'used or required by the water consumers of the party of the first "'part other than said Henry Miller, Charles Lux, and the party of "'the second part;

"'And, whereas, during all said times it was understood by all "'said parties that said Henry Miller and Charles Lux, and said "'Henry Miller as the survivor of them, and said party of the sec-"'ond part, as the successor in interest of them, were of right en-"'titled to the said use, without charge, of the said surplus water in "'said canal, and that said party of the first part was of right en-"'titled to waste said surplus water on said uncultivated lands;

"'And, whereas, the party of the second part has agreed to per-"'mit the party of the first part to appropriate and divert from said "'river, through its "outside canal" three hundred and fifty (350) "'cubic feet per second of the water flowing in said river in addi-"'tion to the aforesaid eight hundred (800) cubic feet per second;

"'Now, therefore, in consideration of the premises, and to the "'end that the rights of the respective parties hereto, as heretofore

"'understood and recognized, may be fixed and established,
529 "'the party of the first part does hereby confirm unto said
"'party of the second part, the right to use, for the purposes

"'of irrigating said uncultivated lands above referred to and of "'furnishing water for its cattle and live stock, and for other do- "'mestic uses, free of cost, or charge to it, all or so much of the "'surplus water running in the canals of the party of the first part "'as the party of the second part may desire to use for said pur- "'poses, and which may not be used or required by the other water "'consumers of the party of the first part; and said party of the "'second part does hereby confirm unto said party of the first part "'the right to waste said surplus water on said uncultivated land.

"'And the party of the first part does hereby acknowledge and "'declare that it has no claim to make against the party of the "'second part, or its predecessors in interest, on account of the use "'heretofore made by it and them of said surplus water.

"'In witness whereof, the said parties hereto have caused these "'presents to be subscribed by their respective presidents and secre- "'taries, under their respective corporate seals, all on the day and "'year first above written.'

"Upon motion of Mr. Nickel, duly seconded, the report was "unanimously adopted.

"Capt. Martin moved, and Mr. Talbot seconded, that the presi- "dent and secretary of this company be authorized to execute for "this company a contract with Miller & Lux in the words and "figures recommended by the committee in its foregoing report, and "to affix the corporate seal of the company thereto. The motion was "carried unanimously. No further business appearing, the board "thereupon adjourned.

"C. Z. MERRITT, *Sec'y.*"

530 X. Q. 226. In "Exhibit 15," Mr. Stangroom says, "The total expense of this work with its proper segregation will be shown in the statements of the San Francisco office, and I, having only a record of cash expended here, cannot give it in full." Those statements of the San Francisco office I should like to see.

A. They would refer naturally to the secretary's statements of receipts and disbursements for those years. This is an annual statement, as I understand.

X. Q. 227. I do not think so.

Mr. TREADWELL: He says they are in the books of the company.

Mr. STONESIFER: No, he does not say the books of the company. He says in the statements of the San Francisco office.

The WITNESS: The only statement rendered in the San Francisco office was the statement of receipts and disbursements.

Mr. STONESIFER:

X Q. 228. How do you know that?

A. I was not there, it is true, but I know what the custom was, and I know those are the only ones I have ever seen.

X Q. 229. You have never seen any statements except such as the secretary rendered to the company?

A. I never have seen any annual statements of this company except such as have been presented here.

X Q. 230. I think the engineer refers to statements that he made.

A. I think differently.

531 Mr. TREADWELL: It shows on the face of it. It is statements of the San Francisco office.

A. (Continuing:) I don't know how to convince you, other than to say that in my judgment that is not what he means, and that all he refers to is the annual statement of the secretary which has been placed in evidence, and that I know of no other statement which could be referred to.

Mr. STONESIFER:

X Q. 231. Let me see that statement.

A. This is for the year ending December 31, 1873. There appears to be two statements here, one from December 31, 1872, to December 13, 1873; the other from December 31, 1872, to December 31, 1873. I will hand you both.

X Q. 232. Then you have not found any statement except this statement made by the secretary?

A. That is an indefinite question. There are lots of statements.

X Q. 233. I mean the statement mentioned as a statement in this report.

A. No sir. I have no knowledge of any statement that could be referred to by that report, other than these statements.

X Q. 234. You have found no record, have you, of any accounting by him of what moneys he expended?

A. Certainly. His monthly statements are on file, and they show that.

X Q. 235. Does he have a monthly statement covering that period?

A. Mr. Stangroom?

X Q. 236. Yes.

A. He made monthly statements to this office, certainly.

532 X Q. 237. Evidently that is what he refers to.

Mr. TREADWELL: He says, "I cannot tell you how much has been spent by the San Francisco office. My monthly statements show how much I have spent."

Mr. STONESIFER: He does not say anything of the kind.

Mr. TREADWELL: That is exactly what he does say. However, you can argue it by yourself, if you want to.

The WITNESS: These statements have been in evidence, at least have been under inspection, here before. Of course, they are all in evidence. What do you want them for, what year?

Mr. STONESIFER:

X Q. 238. The year 1873.

A. This is the year 1873 that I have in my hand.

X Q. 239. All of them?

A. Yes sir. Those are his monthly statements.

X Q. 240. Mr. Merritt, have you made any further inquiry about the value of the stock of the company, since you were first asked about it on cross-examination?

A. No further inquiry, no sir.

X Q. 241. You spoke there of certain sales, but you did not just exactly remember the amount that had been paid for the stock. Have you refreshed your memory since that cross-examination as to the amount that was paid for that stock by Mr. Miller?

A. Yes sir. I refreshed my memory from the records of Miller & Lux. The corporation plaintiff has no records regarding that matter.

X Q. 242. What was the amount paid?

533 A. I decline to state.

Mr. TREADWELL:

Q. For what reason, Mr. Merritt?

A. For the reason that the knowledge I derived was in the capacity of confidential employé of Miller & Lux, and unless I am so directed by the court, I shall not feel at liberty to make any statement in that matter, without having the consent of my principals.

Mr. TREADWELL: As to the question itself, we object to it on the ground that it is immaterial and irrelevant, and it would make no difference as to any issue in the case what Mr. Miller paid, or what Miller & Lux paid for any stock that they bought.

The WITNESS: I have not spoken to Miller & Lux in regard to the matter, and do not know that they would object to my giving the testimony. But unless I should first consult them and receive their approval, I should not feel at liberty to make any statement as to their business.

Mr. STONESIFER:

X Q. 243. You are not able to state what the value of the stock of this company is at the present time, or was in 1896, at the time the board of supervisors lowered your rates?

A. As I have already stated, there is no recognized market value, and never has been, so far as I am aware. And the only standard of value that I could give would be the prices actually obtained for the stock in private transactions.

X Q. 244. From your knowledge of prices obtained in private transactions, what would you say was the value of this stock in 1896?

534 A. I decline to make any statement of that character, because that would be equivalent to saying what had been paid by parties with whom I had confidential relations, and who have not given their consent, and who have not been asked for their consent, to any statements on that subject, on my part.

X Q. 245. Has the stock increased in value since 1881?

Mr. TREADWELL: We object to that upon the ground that it is entirely irrelevant and immaterial, and this witness has not stated any basis upon which he could give any opinion upon that subject.

Mr. STONESIFER: This witness knows, if he will just state it. He knows better than any living man what the value of that stock is, from his position as secretary of this company. His position as secretary of the company affords him better information than any other person in the world.

Mr. TREADWELL: It is entirely a matter of opinion as to what the value of the stock is. It depends on what rates you fix. If your rate stands, it is not worth 6 cents, any of it or the whole of it.

Mr. STONESIFER:

X Q. 246. Mr. Merritt, what had been paid out on account of construction, according to the construction account in the books of the company, up to January 21, 1873?

A. The debit balance of construction account at that date is $111,839.56. Of course, it is understood that this does not show the cost of construction to that date, because many items of that cost were contained in other accounts.

X Q. 247. When was the last assessment levied by the company?

A. On August 29, 1878.

535 X Q. 248. Since that time the company has been paying dividends?

A. No sir.

X Q. 249. When did they first commence paying dividends?

Mr. TREADWELL: That has been fully gone over, and a list of all the dividends is in the record. The entire statement of dividends from first to last has been read off. You will have the record very much incumbered if you put it in again.

A. The first dividend was paid in November, 1881.

Mr. STONESIFER:

X Q. 250. So the company did not commence paying dividends until it had completed its present system down through Stanislaus county?

A. No sir.

Mr. STONESIFER: I think that is all, Mr. Merritt.

The WITNESS: You asked me to look for a certain trial balance. I looked, and could not find a trial balance of the date I spoke of, December 31, 1872. But I did find one dated October 31, 1872, which, while it does not contain the same amounts, is a good index to the accounts that would have appeared in that, and they can readily be turned to in the ledger, so as to show the balances at the date you desire. They show some items there that will throw light on the question of the indebtedness of the company.

Mr. TREADWELL: I do not understand, Mr. Merritt, that that was Mr. Stonesifer's question. I understood him to ask for the condition of the company on December 31, 1871.

The WITNESS: 1872, I thought he said.

Mr. TREADWELL: No, 1871, I understood it. That was it, was it not, Mr. Stonesifer?

536 Mr. STONESIFER: Yes. It was the first day of January, 1872.

The WITNESS: Then I misunderstood you.

Mr. TREADWELL: I told him there was no trial balance of 1871 that I had then been able to find.

The WITNESS: Yes, there is a trial balance for 1871. I misunderstood the date, because I had it firmly in my mind that it was the last of December, 1872.

Mr. TREADWELL: No, it was the 31st of December, 1871. That was what he asked for.

The WITNESS: There is a trial balance up there for some time in 1871.

Redirect examination.

Mr. TREADWELL:

R. D. Q. 1. You were asked, Mr. Merritt, as to the amount shown to the debit of the construction account up to the end of the year 1871; also, in another place, the amount standing to the debit of construction account on the 31st day of January, 1873. Do those amounts represent, or were they intended to represent, all that was expended in and properly chargeable to construction up to those dates respectively?

A. No sir.

R. D. Q. 2. What is the total of the assessments levied on the stock of the company?

A. $10.15 a share.

R. D. Q. 3. You were asked a variety of questions concerning work of construction on the so-called upper canal, with regard
537 to which you said in substance that you found charged in the construction account the sum of $9026, which you had ascertained was construction on the upper canal, and that you were unable to find any evidence of any other work of construction having been done on that canal before 1875. I will ask you whether, outside of construction, there were not other accounts of the company that show expenditures in 1871, 1872, 1873 and 1874, with regard to the upper canal?

A. The engineers' office account.

R. D. Q. 4. The surveying done on that canal would appear in the engineers' office account, would it not?

A. It would.

R. D. Q. 5. And so far as the general management was concerned, that would appear in the general management account, would it not?

A. It would.

R. D. Q. 6. You have examined the books of the company carefully to ascertain whether there was anything done on the upper canal before 1875 for the purposes of construction, have you not?

A. I have.

R. D. Q. 7. And you found no construction except that which is evidenced by that $9026?

A. Nothing but that.

R. D. Q. 8. Prior to 1875?

A. Prior to 1875.

R. D. Q. 9. How did the years 1897 and 1898 compare with average years in that valley, along this canal, in point of rainfall?

A. It was very much less than the average.

R. D. Q. 10. And therefore caused an extraordinary de-
538 mand for water, did it not?

A. It did.

R. D. Q. 11. A demand much greater than in the ordinary year?

A. Yes sir.

R. D. Q. 12. Will you find me the report of the engineers, Colonel Mendell and Major Bender, of 1874, referred to in "Respondents' Exhibit D," Mr. Brereton's report.

A. Yes, sir. There it is (handing).

Mr. TREADWELL: We offer this in evidence, it being endorsed "Report of Colonel G. H. Mendell and Major A. S. Bender, on the condition of the canal, December, 1874," and ask that it be marked "Complainant's Exhibit 23."

(Marked "Complainant's Exhibit 23.")

We also offer in evidence, from volume II of the minutes of the company, the minutes of the stockholders' meeting of May 17, 1899, which is as follows:

"*Special Meeting of Stockholders.*

"SAN FRANCISCO, CAL., WEDNESDAY, *May* 17, 1899.

"Pursuant to the call of the president, notice whereof was pub-
"lished for ten consecutive days in the 'Daily Journal of Commerce,'
"of San Francisco, commencing on 6th inst., as per copy above
"affixed, a copy whereof, printed upon a postal card, was mailed to
"each of the stockholders some days prior to the date of the meet-
"ing, a special meeting of the stockholders of the San Joaquin and
"Kings River Canal and Irrigation Company was held this day, at
"the office of the company, 508 California street, room 16, at the
"hour of 11 o'clock a. m.

539 "At the request of President Miller, Mr. W. H. Talbot, oc-
"cupied the chair.

"The secretary called the roll of stockholders, whereupon it ap-
"peared that the following were present:

"E. T. Allen	100	shares.
"Jerome Lincoln, by James A. White, att'y-in-fact "Philinda G. Lincoln, sole distributee of the est. of "Jerome Lincoln, deceased	500	"
"D. E. Martin	750	"
"Miller & Lux, by Henry Miller, president	46,253	"
"Henry Miller	13,941	"
"Louis F. Monteagle	323	"
"J. Leroy Nickel	3,900	"

"Calvin Paige, by L. F. Monteagle, his att'y-in-fact...	4,000	shares.
"J. S. Potter.....	4,250	"
"Emily F. Pope, by W. H. Talbot, proxy.....	1,000	"
"James Ralph, trustee, by G. Howard Thompson, "proxy	4,941	"
"W. H. Talbot...	100	"
"Sophia G. Pierce, by W. H. Talbot, proxy.....	100	"
"F. C. Talbot, " W. H. Talbot, proxy.....	100	"
"D. Henshaw Ward.....	100	"
"Total shares represented.....	80,358	

"The secretary reported to number of shares represented to the "chair, whereupon a quorum was declared to be present.

"The chair stated that the object of the meeting was to consider "certain matters relating to the use by Miller & Lux of the waters "of the company's canal. For the purpose of bringing the matter "definitely before the meeting, he directed the secretary to read to "the stockholders the report of a committee appointed by the
540 "trustees to investigate the matter, which report had been "received and adopted by the board at a meeting held at "10.30 this morning.

"The secretary thereupon read the report of said committee as "recorded upon pages 67 to 70 of these minutes, and the copy of the "contract therein referred to as recorded on pages 70 to 74 of these "minutes.

"At the request of the chair, Mr. W. B. Treadwell, who was in at- "tendance as one of the company's attorneys, made some supple- "mentary remarks, and answered such questions as the stockholders "desired to ask.

"After full consideration and discussion on the part of the stock- "holders, Mr. Thompson moved that *that* the action of the board of "trustees in the premises be approved, and the contract recom- "mended by the aforesaid committee, and authorized by the board "of trustees at its meeting of this date, be ratified. The motion was "seconded by Mr. Monteagle, and was carried by an unanimous vote.

"No further business appearing, the meeting thereupon ad- "journed.

"C. Z. MERRITT, *Sec'y.*"

541 We also desire to offer in evidence the transcript on appeal in the case of William Lowrey *vs.* San Joaquin & Kings River Canal & Irrigation Company, referred to in the testimony, and ask to have it marked "Complainant's Exhibit 24."

(Marked "Complainant's Exhibit 24.")

Mr. TREADWELL: Mr. Stonesifer, to save putting in witnesses to the effect that Mr. Miller, the president of this company, was not a witness in the Lowrey case, was not present during any portion of the trial, and was never consulted in regard thereto by the attorneys of record with regard to the case, will you admit that those are the facts?

Mr. STONESIFER: If you say that is so, I will.

Mr. TREADWELL: That is the fact. I was the attorney in the case.

Mr. STONESIFER: Then we will admit it.

Mr. TREADWELL: We offer in evidence a paper endorsed, "219 A. Report of trustees committee in matter of settlement of matters in dispute with Miller & Lux, and approval by stockholders, October, 1879," and ask that it be marked "Complainant's Exhibit 25."

(Marked "Complainant's Exhibit 25.")

We also offer in evidence the map of the canals of complainant, and ask that it be marked "Complainant's Exhibit 26."

(Marked "Complainant's Exhibit 26.")

542 Recross-examination.

Mr. STONESIFER:

R. X Q. 1. You say, Mr. Merritt, that the construction account does not show the amount paid out on account of construction?

A. Not the full amount.

R. X Q. 2. It shows nearly the full amount, does it not?

A. How nearly will, of course, have to be determined by an examination of the other accounts. I do not know how nearly it does show. There are other accounts. Of course, the construction account shows the labor, material, and so forth, that were used in the work of construction, and they being determined at the time, could be at once charged into construction account, and stay there. But there were other classes of expense which would ultimately be closed into construction account, but which were kept for the time being in separate accounts for the sake of convenience of reference and for any other motive they might have had, certainly for that, such as the engineers' office account, salary account, general management account, and kindred accounts.

R. X Q. 3. General management does not pertain to construction at all, does it?

A. Certainly, such part of it as contributed to construction. The construction was dependent upon the management, and of course the cost of that management ought to be considered a part of the cost of construction.

R. X Q. 4. The general management account, as it was kept at that time was the same as the maintenance account that is kept now, was it not?

543 A. No sir. The general management account was finally divided up in several subaccounts, as has been heretofore stated, and some of those accounts were carried into construction, and some were charged off to profit and loss, as I think erroneously. But they were properly chargeable to construction, in so far as they accrued during the period of construction, and contributed to the general results.

R. X Q. 5. Can you give us from the books the actual cost of construction up to the first day of January, 1872?

A. I never have made any effort to get it. I do not know really

what I could do, if I were to try it. I could show such accounts as, in my judgment, would belong to construction.

R. X Q. 6. Does not the construction account practically show the cost of construction, with the exception of engineers' salaries, and certain expenses of officers of the company?

A. No. There is a very large item that at the point you were talking about when you asked me that question (the date being, as I remember, December 31, 1871) did not stand in construction account, but which belonged there.

R. X Q. 7. What was that?

A. Namely, the cost of the plant, so far as it was shown by the San Joaquin & Kings River Canal account. That was properly a part of the construction account, but it had not been carried to that, and had been allowed to stand in that account.

R. X Q. 8. That is very true, but you added the amount that the company paid to that company; that covers that. You add
544 that to the construction account, and you have practically the cost of the canal up to that date, do you not?

A. No sir. There are other material items, the engineers' accounts have not gone in yet, and engineers' accounts are very material items in the cost of construction. Your first question was, whether construction account would practically show it. I say, no, and instance one account of a very large amount which belonged to construction account, but which had not been placed there. Now, if you ask me if that is all, I say no, there are still others.

R. X Q. 9. I do not know that you can say that that belongs to the construction account, because that was money paid to the old company for what it had. I am talking now about the construction as it was carried on by this company.

A. That is a matter for argument, I suppose. It is not a matter that I can give any testimony upon, except to express my opinion, which is very positive that it belonged to construction account.

R. X Q. 10. What other item except engineers' expense would you say belonged to this construction account?

A. As I have not a trial balance of the ledger of that date before me, I can only state——

Mr. TREADWELL:

Q. (Interrupting.) You have a trial balance of December 4, 1871?

A. I can only refer to the trial balance of December 4th, and tell you what accounts appear in that trial balance which would in my judgment be a proper part of the construction account. (After
545 referring) Referring to the trial balance of December 4, 1871, the following would be properly chargeable to construction account: San Joaquin & Kings River Canal Company—do you wish the amount stated?

Mr. STONESIFER:

R. X Q. 11. Yes, state it in full.

A. $94,500.06. Expense, $2488.80. Salary, $3570. And there is an amount of $5832.67 appearing to the debit of M. L. Stangroom,

superintendent, which undoubtedly represents cash or property placed in his hands for the purpose of construction, which has been either in whole or in part used for that purpose, and there is doubtless an element, at least, if not the whole of that amount, which should be charged to construction account. Those are all the accounts that I see in the trial balance that, in my judgment, are properly a part of the construction account, apart from construction account itself.

R. X Q. 12. That $94,000 which is in there, is a part of the $119,000 that the company paid the old company, is it not?

A. Yes sir, it is. The whole amount had not then be- paid.

R. X Q. 13 On December 4th they had paid $94,000 of the $119,000?

A. Yes sir.

R. X Q. 14. That is as near as you can give it to us, is it, Mr. Merritt—December 4th?

A. December 4th is the nearest trial balance to the date you are inquiring about. It appears that the account afterwards called engineers' office account was not opened under that name at that time.

Mr. TREADWELL: Permit me to ask a question.

Q. A trial balance could, however, now be drawn, from
546 the books as of the 31st of December, 1871, could it not?

A. Yes sir, certainly.

Mr. STONESIFER:

R. X Q. 15. It could be done?

A. Yes sir, certainly.

R. X Q. 16. Will you do that and give it to me when we meet again?

A. I suggested to your expert that he should do that when he called on me. He could have done it. It seems rather unfair to ask me to do it. I have done a whole lot of work, and have oceans of it stacked up in the office now to do, and I do not like to do any unnecessary work. It is a mere matter of book-keeping. Any one can do it.

R. X Q. 17. I do not like to put extra trouble on you, but you are testifying on these books.

A. I am not employed as an expert for you.

R. X Q. 18. I would rather have you do it than any expert I could get.

A. Any expert can do it. I do not suppose I am under any obligation to do expert work.

R. X Q. 19. You have testified on that matter.

Mr. TREADWELL: You have been examining him today and yesterday in your own case, and not by way of cross-examination. There is no cross-examination in this at all; not a bit of it.

Mr. STONESIFER: That is all, Mr. Merritt.

547 Mr. TREADWELL: At this point we close the direct testimony on behalf of the complainant, so far as it relates to testimony to

be taken in this district. There are depositions to be taken on behalf of the complainant in other districts, and we ask the consent of counsel now that, without interfering with the taking of their testimony, we may take those depositions, and, when returned, they may be offered at any stage of the case.

Mr. STONESIFER: We agree to that.

Mr. TREADWELL: We also reserve the right at any time during the taking of testimony in this case, to produce Mr. George L. Hoffman as a witness, or proof that he cannot be found.

Mr. STONESIFER: Very well.

Mr. TREADWELL: With that understanding, we close our case.

Testimony for the Respondents.

It is stipulated by the parties that the testimony of R. H. Goodwin and E. D. Grove, taken before the board of supervisors of Stanislaus county, in the hearing mentioned in the bill of complaint here, be deemed and taken to be the testimony of said witnesses in this cause, in the same manner as if they were now personally present and testified, and the respondents need not produce them to testify.

548 The report of R. H. Goodwin, consulting engineer, and E. D. Grove, deputy county surveyor, made to the board of supervisors of Stanislaus county upon the estimated cost of the canal, ditches, water chutes, and all other property actually used and useful to the appropriation and furnishing of water for the canal, is as follows:

"To the honorable the board of supervisors of the county of Stanis-
"laus, State of California.

"GENTLEMEN: As per request of Supervisor Mr. J. P. Barnes, we "have made a survey of the canal belonging to the 'San Joaquin and "Kings River Canal and Irrigation Company,' and herewith submit "the following report and estimated cost of the canal, ditches, water "chutes, and all other property actually used and useful to the ap-"propriation and furnishing of water for such canal.

"The canal is located on the west side of the San Joaquin valley, "being, lying and situate in the county of Fresno, Merced and Stan-"islaus, State of California.

"The length of the main canal is 71.17 miles, 26.77 miles of which "being double, making a total distance of 97.94 miles of constructed "canal.

"The width of the canal varies from 25 feet to 40 feet, but the "majority is of 30 feet base.

"37.97 miles *was* constructed in the year 1872, 28.87 miles in
"1878, and 4.10 miles in 1884.

549 "The banks of the canal are in very fair order, but the bed
"is badly silted in many places.

"The upper 30 miles of the canal passes through a thinly settled "and unimproved country, the balance of 41.17 miles through a "productive and fast-growing district.

"The following is an estimated cost of construction of the above-

" mentioned canal, taking in consideration the different widths, cross-
" sections, grades, materials and appurtenances based on the prices of
" materials, supplies and labor of the present date.

" Earth excavation 2,966,125 yards @ 6½c	$192,798.10
" Lumber in head, regulating, distributing, waste and " inlet gates, boxes, bridges, etc., 1,689,410 feet b. m. " in place	55,536.50
" Six station buildings	4,000.00
" Telephone line, 70 miles	4,900.00
" Engineering, superintendence, offices of company, " stationery and printing, law expenses, and other " incidentals	25,723.40
" Right of way, first 30 miles, 900 acres @ $3.00	2,700.00
" Right of way, balance distance, 1068 acres @ $25.00	26,700.00
" Total cost	$312,358.00

" *Cash Value.*

" We place the present cash value of the above-mentioned canal " and works at, $251,000.00.

" We give the following very liberal items of annual expenses " for maintenance of the above-mentioned canal:

550	" Salary secretary	$1,800.00
	" " superintendent	1,800.00
	" " 6 sectionmen @ $45.00	3,240,00
" Office rent		300.00
" Stationery & printing		150.00
" Rent of 7 telephone boxes		140.00
" Batteries		25.00
" Feeding 10 horses		1,080.00
" Annual *pro rata* on cost of 10 horses		65.00
" " " " " " buggy and carts		80.00
" " cleaning canal of silt & weeds		1,500.00
" " repairs on bridges and gates		320.00
" " " " brush dam		500.00
" " taxes, approx		2,100.00
" " travelling & incidental expenses		150.00
" Total expenses		$13,250.00

" Modesto, Cal., June 9th, 1896.
" Respectfully submitted,

" R. H. GOODWIN,
" *Consulting Engineer.*
" E. D. GROVE,
" *D'p'ty Co. Surveyor.*

" Indorsed: Report of engineers as to value of San J. and S. R. " Canal & etc. Filed June 10th, 1896. A. S. Dingley, clerk, by " L. H. Hammett, deputy."

551 Thereupon R. H. GOODWIN was called, sworn and testified as follows:

CHAIRMAN: Gentlemen, don't you think that the report of the experts and engineers ought to be sworn to?

Mr. DAVIS: It looks like it.

Mr. OSLER: Well, if the experts are sworn—they will be sworn anyhow.

Mr. FULKERTH: He is sworn now.

Mr. OSLER: Then ask him if that is his report.

CHAIRMAN: The affidavit ought to be indorsed on the report and sworn to by both of them.

Mr. FULKERTH: Well, that can be done.

Mr. MCENERNEY: Shall I proceed?

CHAIRMAN: Yes.

Mr. MCENERNEY:

Q. Mr. Goodwin, you are the engineer or one of the engineers who was employed to make a report to this board of the value of the San Joaquin and Kings River Canal and Irrigation Company's canal in the counties of Fresno, Merced and Stanislaus, weren't you?

A. I was.

Q. When were you employed?

A. Employed about two months ago. Want the exact date?

Q. Yes.

A. Well, I can give it to you——

Q. It does not matter about the date; about the time.

A. April 28th, I think.

Q. April 28th. You examined the canal from its source to its end, did you?

A. I did, sir.

Q. With whom?

A. With and in company of Mr. Grove, deputy county surveyor.

552 Q. The deputy county surveyor, Mr. E. D. Grove?

A. Yes sir.

Q. You ascertained the value of this canal to be $312,358, did you, or $251,000.00?

A. Well, there is two values there.

Q. Yes.

A. Whatever it was there.

Q. You say the present cash value is $251,000.00, and the estimated cost of construction is $312,358.00.

A. Yes sir.

Q. What do you mean by the "estimated cost of construction," Mr. Goodwin?

A. I mean that a canal built upon the same lines and cross-sections at the present value—present wages, etc., would cost that amount; take that amount to build it.

Q. Yes sir. Now, why do you say that its present value is only $251,000.00?

A. Because the canal is not in the shape that it would be if it was built at the present time on account of the depreciation of the lumber and the silting. The canal is filled up in many places with silt, and that would have to be taken out to come to or meet the original lines and the first value.

Q. Yes sir. You say that it is not now built as it would be built if it were built anew.

A. No sir, I don't mean that.

Q. Well?

A. It is filled up in places, and of course the cost is made out to the neat lines of any cross-section and to a certain grade line; of course that is the first calculation; now the other is the silt-

553 ing and the lumber, as it depreciates in value, and you have to deduct that from it to get the present cost of it or present value.

Q. Well, now, how much do you allow by way of depreciation and for the silting of the canal?

A. Well, I have the measurements; I have the cross-sections showing the different points, and I have——

Q. Well, will you produce them?

A. Will you get the cross-sections, Mr. Grove? (Produced.) There are some (showing); those are of the silted portion of the canal.

Q. How much of the canal is silted?

A. I took it from the San Louis creek.

Q. How much of it altogether is silted?

A. Well, it is at different places. I could tell you if you want to go into the details of it.

Q. Well, that is what I want to know. What distance is silted?

A. That was taken as a general average, you see, because it was only at bridges where we could take the cross-sections.

Q. How much in your calculation, of the depreciation of $51,000 between the cost of construction and the present value, did you allow for the fact that the canal was silted?

A. I allowed the whole silting of the whole canal as 223767.

Q. What?

A. Yards.

Q. 223,767 yards.

A. Yes, sir.

Q. How much did you estimate it would cost to clean that?

A. Ten cents.

554 Q. So that accounts for about $22,376.70 of the $51,000 depreciation from the cost of construction to the present value.

A. Just one minute; let me see if that is it. (Referring to memorandum) It is 223,000, yes, that is the silting.

Q. 223,767.

A. 765, I have it here in the other place.

Q. Now, what went to make up the other thirty thousand depreciation or 29,000.00?

A. The lumber bill.

Q. You think that the lumber depreciated $29,000.00. How did you arrive at that figure, Mr. Goodwin?

A. That portion of it that was put in in 1873 cost $34,000.00 at the first estimate there, and I deduct thirty per cent.; deduct thirty per cent. on that for the cash value. It depreciated $24,288.00.

Q. The $34,000 has depreciated 70 %.

A. Yes sir.

Q. And that is——

A. Do you want the correct figures?

Q. Well, it is $23,000.00, isn't it?

A. It is $24,288.00 exact numbers; you haven't the fractions in there.

Q. Yes. Thirty-four thousand and——

A. $34,697.00; deducting that amount, that leaves you the cash value.

Q. $24,287.90.

A. No, $288.20.

Q. Well, now, that is the lumber. You say that the original cost of the lumber which went into the construction of these works in 1873 was $34,697.00, and that depreciated 70 %.

A. Yes, sir.

555 Mr. FULKERTH: Let me see if I understand that. I understand that you are figuring on the cost of lumber at the present time.

A. Lumber at the present time.

Mr. FULKERTH: At the present time.

Mr. MCENERNEY: Well, some of that is wear and tear, isn't it; it has depreciated with age as well as in price?

A. Age. The price is in my first cost; we are supposing that the lumber on that date was the same price as today.

Q. Then you take off the per cent.

A. Then I take off the per cent.

Q. Yes sir. So there may be no mistake: You take the amount of lumber which went into that construction in 1873, and you say if that lumber were put in today it would cost $34,797.00.

A. Yes sir, you have it.

Q. And it has been in there for 23 years, and therefore it has depreciated 70 %.

A. Yes sir.

Q. Therefore, the value of the lumber which was put in in 1873 is the present value of like lumber less 70 % for wear, tear and depreciation.

A. That is my stand, yes sir.

Q. Now, how did you arrive at the figures $34,697.00 for that lumber?

A. Well, that is the price of the lumber in San Francisco, freight added, putting it in place, etc.

Q. Well, give us the items which go to make it up.

A. In particular?

Q. Well, I want the figures which added make $34,697.00.

A. You want the thirty-four thousand?

Q. Yes.

556 A. Well, it will take a week to go through that, I guess.

Q. Well, have you the figures there?

A. There is the figures right there and everything in it (referring to memorandum).

Q. Well, let us see it.

(Memorandum introduced and marked "Goodwin's Exhibit A." N. E. L.)

Q. What are these papers? (Showing.)

A. Those are cross-sections of the canal at different points.

Mr. McEnerney: Now, I will ask to have these marked "Goodwin's Exhibit B" and "Goodwin's Exhibit C."

(Exhibit so marked by reporter.)

Witness: They are the notes of particular stations, of bridges and regulating gates, etc., etc.

Q. How many cross-sections did you take on the canal, Mr. Goodwin?

A. At most every bridge.

Q. Yes sir.

A. That is the only way I could get at them. There are only twelve marked down there on the cross-sections; I merely drew those to get a general average.

Q. Will you give us the number of cross-sections you made?

A. About twenty-three of them.

Q. About 23 of them. You made those cross-sections at the bridges, did you?

A. At different points, bridges and all.

Q. Well, how many did you make at bridges?

A. Well, here they are on these two exhibits; there are twelve of them, that is from the San Louis creek, which is where I took

557 the cross-sections for the silting purposes—from that down.

Q. Yes sir. Now, at what other points on the canal did you take them?

A. On the parallel canals; which would be on that one. (Showing memorandum.)

Mr. McEnerney: Mark that "Goodwin's Exhibit D."

Witness: That would be the upper work (showing).

Mr. McEnerney: Mark that "Goodwin's Exhibit E."

Q. Do these sheets show the points at which you made the cross-sections?

A. Yes sir.

Q. There are four of them, are there?

A. Yes sir.

Q. Now, let me understand the general plan of your calculation. You calculate that redwood planking was worth $13.00 a thousand feet.

A. Yes sir.

Q. Where?

A. San Francisco.
Q. At San Francisco.
A. Or Oakland.
Q. And that redwood timber was worth $14.00 a thousand.
A. Yes sir.
Q. And that pine was worth $11.00 a thousand.
A. Yes sir.
Q. And the piles per running foot was worth 13c.
A. Correct.
Q. Now, the prices which you fixed as already stated, were fixed as of what time or date?
A. At the date—want the correct date?
Q. Well, since you were employed by the board?
A. Yes sir.
Q. Within the last two months.
A. Yes sir.
Q. Or three months. Now, you say that the carpenter work on bridges per thousand feet, was $5.00.
A. Yes sir.
558 Q. How do you arrive at that, Mr. Goodwin?
A. I got that from consulting with bridgemen and from my personal experience—observation.
Q. Well, whom did you consult with to get those figures?
A. The Pacific Bridge Company and the San Francisco Bridge Company.
Q. Yes. Well, what particular men?
A. Well, Mr. Cadiz and Mr. Jones.
Q. Did you consult with them personally or in writing?
A. Personally.
Q. No writings have passed between you?
A. No sir.
Q. Now, apart from your communication and information which you received from them, what personal knowledge have you on the subject?
A. I have a general knowledge of 20 years at different classes of work.
Q. Well, this particular kind of work?
A. I have had about six years of that.
Q. Yes sir. Where?
A. Designing. There on the Turlock canal.
Q. What did they pay for bridge-work per thousand feet?
A. About $77.00. I believe the contract was let for $60.00 or $77.00.
Q. For how much?
A. For a thousand.
Q. Seventy-seven?
A. Yes sir; that took in everything. Everything included. This is on a different basis.
559 Q. I understand, but what work have you seen done which followed this plan of calculation which you have pursued here?

A. County work.

Q. What county work?

A. This county work here.

Q. Well, what particular piece of county work?

A. Well, up around La Grange; I don't remember the exact—I can't define it, it is in Mr. Davis' district.

Q. How much was expended there?

A. I really don't remember; a small bridge.

Q. Well, about how much, Mr. Goodwin?

A. Oh, about a thousand dollars.

Q. A thousand dollars. When was that built?

A. That was built I think about four or five years ago—three or four years ago.

Q. Who was the contractor?

A. I don't remember. I was up and down along the line, I was the engineer of the district.

Q. Were you the engineer on that particular piece of work for the county?

A. No, I was not.

Q. Yes sir. Now, how do you — that that work was bid for upon this calculation or it was done upon the calculation or plan which you have pursued here?

A. All I know is from the general—from the general way that the bridgemen bid or calculate on the labor by the amount of feet of lumber in the bridge.

Q. Yes.

A. That is all I know, is the general prices running; different men have different values.

Q. Yes.

560 A. Different men have different prices, rather.

Mr. STONESIFER: I understood it was $5.00 per thousand.

A. That is what we are talking about, $5.00 a thousand.

Q. Now, what other instances besides this bridge of a thousand dollars do you know, where this plan was pursued, this system of calculation.

A. Well, on about $80,000 worth of the Modesto flume about two years ago.

Q. Who bid for that?

A. I think it was the San Francisco Bridge Company; Mr. Jones had charge of it.

Q. Did they bid to put the lumber in place in this flume for five dollars per thousand?

A. No sir, they bid it in a lump.

Q. Yes sir.

A. In place of that the whole estimate on this is piecemeal; earth is taken as earth, and lumber as lumber, and nails as nails, and rope as rope.

Q. Well, now, do you know how they arrived at the sum which they bid for that flume?

A. I do.

Q. Well, what rate?

A. They took carpenter-work as worth so much; earth-work as worth so much, nails as worth so much, and the hauling of the lumber so much, etc.

Q. How much did they take their carpenter-work as?

A. I don't know. That contract was a secret.

Q. You don't know, then, whether five or eight or——

A. No, I don't know what they did that particular work for.

561 Q. Now do you know of any piece of work which has been done where you are in possession of the rate which they fixed per thousand for the carpenter-work?

A. No, because they don't generally do it that way.

Q. No.

A. They do it usually per thousand in place.

Q. In place?

A. Yes sir.

Q. Well, you have it down so much per thousand?

A. Yes sir, I have it segregated each item.

Q. Yes sir. Well, how do you arrive at five dollars per thousand as the proper figure for carpenter-work or labor furnished in the construction of a building?

A. I got that from consulting with people who do that work year in and year out.

Q. Who, now, besides the San Francisco and Pacific Bridge Companies?

A. That is all.

Q. So you arrived at your estimate from information derived from the officers of those two companies?

A. Yes sir.

Q. When did you get that information?

A. Within the last two months.

Q. Went to San Francisco and interviewed them?

A. I did.

Q. Whom did you interview in the Pacific Bridge Company?

A. Mr. Meadows.

Q. What did he tell you?

A. Four dollars per thousand was ample.

Q. Who else did you talk with?

A. Mr. Jones, about a week ago.

Q. Did you take him up along the line of the canal?

562 A. No sir, I explained the circumstances, and he is familiar with canal-work.

Q. Now, those two gentlemen furnished you with all the information that you have upon that subject.

A. Upon that subject, yes sir.

Q. And you got that within the last three months?

A. Yes sir.

Q. Now, after you put down the price per thousand for lumber, and the price per thousand for the carpenter-work in putting the lumber in place, what other items went to make up your calculation of $55,536.50, Mr. Goodwin?

A. You will find in there the rate of freight and the hauling of lumber at each different point.

Q. Yes.

A. Which is carried throughout each piece of work, the respective sums at the nearest station; what it was put at.

Q. How much did you calculate the dam where this water is taken, cost?

A. The whole thing is in there right on the first page, you will see the whole item; items of lumber, labor, brush, and everything else.

Q. Will you give us the cost, according to the present cost, of constructing the whole headworks in this system?

A. Do you want each item or the sum total?

Q. Well, the sum total and then the items. Well, you may call off the items.

A. Well, 12,500 yards of brush-work in dam.

Q. Well, I don't want that. I want the figure for the dam
563 itself; $12,000, isn't it?

A. $7,800.00.

Q. For the dam?

A. Yes sir. Headgates is $2337.00—do you want the odd cents?

Q. No—well, might as well call them off.

A. Well, $7806.00; $2337.35 for the headgates and the falling dam is $2837.40.

Q. Do you know how much that whole headworks amounts to?

A. I didn't figure it up.

Q. How many items go to make it up, Mr. Stonesifer, please?

Mr. STONESIFER: Three; $12,980.00.

Q. $12,980.75. You allowed $468 for the driving of piles there, did you?

A. Yes sir.

Q. How deep are they required to be driven?

A. I think it is 40 feet, I am not sure, though. Those piles that are in there are driven 20 feet, in the dam.

Q. Now, Mr. Goodwin, how did you arrive at the conclusion that the excavation required in the construction of this canal was 2,966,125 yards?

A. I took——

Q. Have you a detailed statement of it on paper like this? (Indicating.)

A. No sir; I have the cuts and fills of the whole business in this book (showing).

Q. Have you anything else in that book?

A. I have a memoranda here that I will refer to every once in a while.

Q. Yes sir. Well, is that book numbered? Are the pages of it numbered?

A. No sir.

Q. Let me look at it, please. (Book handed to counsel.)

564 Q. Well, the cuts and fills are in one portion of the book, aren't they?

A. Yes sir.

Q. Will you just mark the page which commences the cuts and fills, and the page which ends it, and we will offer that in evidence.

A. Shall I turn down a page?

Q. Well, turn down the page and mark it "Beginning of cut and fill," and the other "End of cut and fill."

Q. It starts right in from the beginning, the first page.

Q. All right, just mark the beginning there.

(Witness marks book "Beginning of earthwork" and "End of earthwork.")

Q. Now, this book will show—in fact, the total on the last page is the 2,966,125 yards.

A. Yes sir.

Q. So, to an engineer, that is quite intelligible; to a lawyer I suppose it is not.

A. Well.

Q. Now, what kind of soil did you find along through that canal to be excavated?

A. Earth.

Q. Well, what character and quality?

A. Well, it is a loam.

Q. All? For the entire distance?

A. Well, there was evidence of a little hard-pan.

Q. Where?

A. It was between Firebaugh's and a place called or supposed to be the "Wood's ranch," I believe.

Q. How long was the hard-pan?

A. We would not classify it as hard-pan now because it was not blasted; it used to be classed as earth.

Q. It never was blasted?

A. No sir; it was classed as earth.

565 Q. Well, how do you arrive at the conclusion that it was not blasted?

A. From evidence. From hearsay. From the men that built it, in fact.

Q. That is the only information you have on the subject?

A. That is all.

Q. There was nothing along the line of the canal which would be evidence to an engineer that it hadn't been blasted, was there?

A. I didn't see any.

Q. You could not tell——

A. No, so many years ago.

Q. (continued). —at this time.

A. No sir.

Q. Who was the man that told you it hadn't been blasted?

A. Mr. Drummond.

Q. Drummond?

A. Yes sir.

Q. Now, this piece of hard-pan you spoke about, would that be described as being between Jameson's and Bailey's? Do you know

where Jameson's is along the line of that canal, place called Jameson's?

A. I don't know whether I do or not; Jameson's, I think that is near "Camp 13," isn't it?

Mr. McENERNEY: Is that near Camp 13, Mr. Rouse?

Mr. ROUSE: Yes sir.

A. Camp 13 is between Jameson's and Bailey's bridge. Did you see any evidence of hard-pan from Jameson's down to Bailey's place?

A. I don't recollect of any.

Q. Yes sir. For what distance did you see the evidence of hard-pan between Firebaugh's and—what other point was it, you said?

566 A. Wood's ranch, I think, I forget the name of it now. I don't know the name of it now; maybe that is the ranch you speak of, isn't it?

Mr. ROUSE: Wood's ranch is below Los Banos.

Q. You don't recollect of seeing any evidence of hard-pan between Jameson's and——

A. I don't recollect of anything except right below Firebaugh's for maybe ten miles or six or seven miles, or something like that.

Q. Now, your estimate of the cost of constructing this canal at present is based upon the idea that there was no canal along its present route, and that you would build a canal where the present canal is situated.

A. Yes sir.

Q. That is correct, is it?

A. Yes sir.

Q. Now, is there any adobe—would there have been any adobe excavations to have been made along the line of that canal?

A. There might have been a little, but then, if it had amounted to a good deal, I should have taken notice of it.

Q. How much did the adobe along the line of that canal amount to in point of distance?

A. I didn't take any notice of it.

Q. A half mile?

A. I would not say a half mile or a mile; it could not have been over a half, because I should have noticed it.

Q. Yes. Well, did you find any heavy soil for some distance after you leave the headworks?

A. Yes sir, it is heavy soil at the headgates.

Q. Very heavy. What kind of soil is it?

A. It is loam.

Q. Loam.

567 A. It is earth, classified as earth. Any engineer would classify it as earth.

Q. Yes sir. Well, does the soil get lighter as you come down the canal from the headworks?

A. Well, yes.

Q. Well, where does it cease to be of this heavy quality which you find near the headworks?

A. Might say a mile of it.

Q. Within a mile of it?

A. Yes sir.

Q. Then, it is called among engineers, what kind of soil?

A. Earth.

Q. Earth.

A. Everything on that canal is classified as earth.

Q. Yes sir. There are no grades of earth?

A. No sir.

Q. Along the line of that canal.

A. No sir.

Q. Then you think it is not worth any more to excavate on any one point along the line of that canal than it is on any other point along the line of the canal.

A. Not to build it as a lump.

Q. Yes sir. Well, in arriving at it, would you think the cost would be more at any one point than at any other point? I mean, was it of an even quality throughout, practically.

A. It is practically even throughout.

Q. Yes sir. You would not make any allowances——

A. No sir.

Q. (continued). —or additions for the more difficult quality of the soil at a particular point along the line of the canal than at any other point?

A. No sir; unless they used powder, then, of course, they would be entitled to it.

568 Q. Yes sir. Well, there is not any point along the canal where it is substantially more difficult to excavate than at any other point along the canal.

A. No sir.

Q. That is why you make a uniform rate of six and one-half cents per yard.

A. Yes sir.

Q. Now, how do you arrive at that figure, Mr. Goodwin?

A. Well, I have different ways; from different men; different contractors; different engineers, and my own observation.

Q. Well, let us start with your own observation; now what has been your observation?

A. I have seen thousands of yards moved at contract price, at eight cents and seven and a half.

Q. Yes sir. Where?

A. I have seen it in Stanislaus county.

Q. Yes sir. Where in Stanislaus county; this is a large county, you know.

A. I know it is. South of the Tuolumne.

Q. Yes sir; what particular work?

A. In the Turlock irrigation district.

Q. Turlock irrigation district. Who moved it; how much was moved and when was it moved, and at what price?

A. A great deal was moved in 1890.
Q. 1890; by whom?
A. The firm of Heitchew & Meadows.
Q. Hetichew?
A. Heitchew & Meadows
Q. How much was moved?
A. I could not state now.
Q. At what rate?
A. Eight cents.
Q. He took the benefit of the insolvent act after that and went through, didn't they?
569 A. Yes sir; but no man can live at the Palace hotel and drink champagne and do that kind of work.
Q. At eight cents.
A. No.
Mr. FULKERTH: And support women.
The WITNESS: No, you bet you.
Mr. OSSLER: What was your estimate on this canal?
A. Six and a half cents.
Q. Well, what was the contract price there?
A. Eight cents.
Q. How many yards did they move?
A. Well, of course I can't remember the yards; there was about twenty miles of it.
Q. Well, what is the next one, in your own observation.
A. Well——
Q. Or within your own knowledge.
A. Well, I built or oversee the building of a portion of the Paige, Wilbur railroad on the west side of the San Joaquin on similar soil as this canal.
Q. At what rate and what year?
A. It wasn't of contract; it was day labor.
Q. Day labor, all right. What did it figure up?
A. I wasn't superintendent of the construction. I merely had the location of the road, etc., but I don't think anybody ever knew what it was worth.
Q. Well, then, that is not one of the elements which went to make you arrive at this six and one-half.
A. No.
Q. What is the next one?
A. Well, years ago in Marysville I put up a levee.
570 Q. How many years ago?
A. 16 years ago.
Q. 1870?
A. 1880.
Q. Yes, I beg your pardon. You built a levee?
A. Yes sir, and the prices were about the same as now.
Q. Yes sir.
A. That was contract. I don't remember the stated contract, but we figured on the work there and we made it five and $\frac{3}{4}$ cents that it cost to build it.

Q. How much of it did you build?
A. There was about—I think there was two or three miles of it.
Q. Easier to build a levee than to excavate a canal?
A. No sir.
Q. More difficult or just about the same?
A. It was a higher levee.
Q. It was a higher levee?
A. Yes sir.
Q. Well, would it be cheaper to excavate the San Joaquin and Kings River canal than to build that levee, now?
A. Yes sir.
Q. Now, the next one that has come within your observation.
A. Well, I don't recollect any just now.
Q. Now, then, have you any where the prices were much more than eight cents, around here, within your knowledge.
A. Yes sir.
Q. Now, what were they?
A. The contract on the south side of the Tuolumne, 18 cents.
Q. What was that?
A. Earth sand.
Q. Well, what particular contract?
571 A. Well, the contract was Doe, Hunt & Co.
Mr. OSLER: They busted, too, didn't they? Eighteen cents.
A. Yes sir.
Q. They took that out in bonds, though, didn't they?
A. I don't know.
Q. Well, didn't they sublet it to somebody else?
A. They sublet it for ten cents, I believe.
Q. To whom?
A. J. D. McDougal, of Stockton.
Q. How much of that was there?
A. I think there was about five miles.
Q. Now, what else? What other contract that you know about?
A. Well, I don't know, personally, of any more around.
Q. Yes sir, the valley road, know anything about that?
A. I have it only from hearsay; I know what the contract figures on.
Q. Those are the only instances which came within your own knowledge upon which you arrive at the conclusion that it was worth six and one-half cents to do that work?
A. Yes sir, of late.
Mr. STONESIFER: That is, outside of your other information.
A. Oh, outside of the other information.
Q. Well, what other information did you have?
A. I have brother engineers that gave me their version of the fact, their estimates.
Q. Who were they, and did you communicate with them orally or in writing?
A. In writing.
Q. Where?

572 A. Well, I didn't communicate with them only orally; I got writings from them.

Q. Will you let me have those papers, please?

A. Certainly. (Producing letters.)

Q. How did you put the hypothetical case to them, Mr. Goodwin?

A. They know the canal themselves.

Q. Did Mr. Stephen F. Taylor know what canal it was?

A. Yes sir.

Q. Well, who drew these affidavits?

A. Mr. Wheat, I believe, it was in his office.

Q. Did he draw them or did you draw them?

A. I didn't draw them.

Mr. FULKERTH: Mr. Wheat is a notary public?

A. He is a notary public. His clerk I guess drew them up.

Q. Who besides Mr. Bates, Mr. Taylor and Mr. Daugherty did you get estimates from?

A. That is all.

Q. Those are the three?

A. Yes sir.

Q. Are these the only communications you got from them?

A. From them?

Q. Yes sir.

A. I had a verbal conversation with them, and asked them if they would give me the affidavits, and they knowing the land, they said they would, and gave it, and that is the result of it.

Q. You didn't leave any form of affidavit with them?

A. I left a little pencil sketch.

Q. Did you leave the statement that appears "Six and a half cents would not admit of much profit to the contractor but can be done without any loss"?

573 A. Yes sir.

Q. Then that is what you mean by your estimate of six and one-half cents?

A. Yes sir.

Q. It wouldn't leave much margin or profit in that transaction but you think that is the price at which a contractor could go to work and do it for.

A. Yes sir.

Q. That is to say, if you were doing it for yourself, you could do it for six and a half cents.

A. Yes sir, and less too.

Q. For how much less do you think you could do it?

A. About three-quarters of a cent.

Q. So you think there would be a profit.

A. There is a profit in that.

Q. Well, don't you think that three-fourths of a cent profit would be a very good profit on a job of this size?

A. I would.

Q. Yes sir. Then why did you draw these drafts of affidavits

that "it would permit a man to do it without a loss but would not give him very much profit"?

A. As I understand this, this wasn't coming down to dollars and cents; merely an estimate.

Q. Well, that would give him a profit of $20,000 anyhow, wouldn't it, on that job.

A. Yes sir.

Q. Well, that is a profit, among engineers, isn't it?

A. You can get it done cheaper than that by excavators.

Q. Yes sir.

A. I think you can find plenty of men to take that contract for six and a half cents.

574 Q. Yes sir; well you think so.

A. Yes sir.

Q. You haven't the knowledge of any other contracts except those you have given us, upon which to base that conclusion?

A. I have no present knowledge.

Q. Yes sir.

A. But I think you can get one, if you want it.

Q. Now, these station buildings you estimate to be worth $4,000.00. How do you arrive at that conclusion?

Mr. FULKERTH: I understand those are offered in evidence?

Mr. MCENERNEY: No, I am going to offer the book in evidence.

Mr. FULKERTH: I mean those communications—affidavits.

Mr. STONESIFER: You are getting into our private affairs here, and we ask that they go in as you bring them out.

Mr. MCENERNEY: You can offer them, and I will just put in an objection to their admission; that is all. We will offer this book of Mr. Goodwin's and ask to have it marked as "Goodwin's Exhibit F." (So marked.)

Mr. STONESIFER: We will offer those in evidence.

Mr. MCENERNEY: And we will object to them; they are the affidavits. We will object to those affidavits being offered in evidence or considered for the reason that they are estimates of the cost of this work by men who are not shown to be engineers; who put estimates upon suppositious work and not upon this work, and whom we have had no opportunity to see, and whom we have had no opportunity to cross-examine. I suppose we could get a hun-

575 dred affidavits on both sides in the county, if we had $50.00 to pay a notary public to take the testimony. I don't know these gentlemen; they may be very well qualified and competent, but if Mr. Stonesifer's clients expect to prove their case by them, it seems to me they ought to be produced here. They certainly haven't been employed by the board, and their sworn statement is not an official document. I just object to them.

Mr. STONESIFER: I will read this first one of Taylor's:

"I, Stephen F. Taylor, a civil engineer of thirty years' standing, have had charge of the construction of numerous railroads and canals, and consider that at the present price of labor and supplies that six and one-half cents per cubic yard is a fair cost price for moving

earth on a canal of thirty feet base and six feet banks. This price, however, would not admit of much profit to the contractor but can be done without loss.

(Signed) S. F. TAYLOR.

Subscribed and sworn to before me this 19th day of June, A. D. 1896.

CHARLES D. WHEAT,
Notary Public in and for the City and County of San Francisco, State of California. [SEAL.]"

Mr. McENERNEY: It don't say whether in India, South America, South Africa, or the Transva-l.

Mr. STONESIFER: The next is of Joseph H. Bates. It reads:

"I, Joseph H. Bates, a civil engineer of thirty years' standing, have had charge of the construction of many railroads and
576 canals, and consider that at the present price of labor and supplies that six and one-half cents per cubic yard is a fair cost price for moving earth on a canal of thirty-foot base and six-foot banks. This price, however, would not admit of much profit to the contractor but can be done without any loss.

J. H. BATES.

Subscribed and sworn to before me this 18th day of June, A. D. 1896.

CHARLES D. WHEAT,
Notary Public in and for the City and County of San Francisco, State of California. [SEAL.]"

Mr. STONESIFER: The other is the affidavit of Mr. George H. Dougherty, and reads as follows:

"I, George W. Dougherty, a civil engineer of thirty-five years' standing, have had charge of the construction of many railroads and canals, and consider that at the present price of labor and supplies that six and one-half cents per cubic yard is a fair cost price for moving earth on a canal of thirty-foot base and six-foot banks. This price, however, would not admit of much profit to the contractor but can be done without any loss.

GEORGE W. DOUGHERTY.

Subscribed and sworn to before me this 17th day of June, A. D. 1896.

CHARLES D. WHEAT,
Notary Public in and for the City and County of San Francisco, State of California. [SEAL.]"

Mr. STONESIFER: We ask those be marked as "Goodwin's Exhibits G, H and I."

Mr. McENERNEY: Now, if they are received, I just want to note——

577 CHAIRMAN: Gentlemen, what do you say? Do you want to admit those?

Mr. OSLER: It don't say where they are or on what they are figuring.

Mr. FULKERTH: I understand that Mr. Goodwin says that he submitted this very subject-matter to them and that they were figuring on this very canal.

Mr. OSLER: I know it, but they don't say it in their affidavits.

Mr. MCENERNEY: Not only do they not state where the work is to be done, but in the next place, it is not proper, and I want to accentuate that objection, that if Mr. Goodwin intends to substantiate his position here by the affidavits of other men, he violates the most fundamental rules of investigations which control this board, as it controls every body or tribunal or officer clothed with quasi-judicial capacity, namely: if a witness is to be brought here and his information given upon a subject which involves the rights and interest of others, that he ought to come here and submit himself to cross-examination.

CHAIRMAN: What do you say, gentlemen; there is an objection.

Mr. GRIFFIN: I would just say that that affidavit in no court of record would ever be admitted. The attorneys on the other side know that, too, but they insist on putting it in.

Mr. MCENERNEY: Even, if the court please, that the view of the law that the board should not be governed by the procedure
578 which obtains in courts of justice, even if that view is correct, it certainly is bound by the ordinary rules of evidence, and that when you have a witness, he cannot send his affidavit up here and thereby escape cross-examination.

Mr. STONESIFER: There is another particular reason why these are specially admissible, if the board please: Because the gentleman himself has brought them out; he has called for those affidavits; they are a part of his case on cross-examination of Mr. Goodwin. Any court of record would receive them as memoranda in support of Mr. Goodwin's testimony on which he is being cross-examined by the attorney for the canal company.

Mr. MCENERNEY: I also ask, in advance of their admission, that if the board considers they are proper to be admitted, that it be stated by the board at the time of the admission of the paper, for what specific purpose they are admitted; because if for any special purpose they are admissible but are not admissible to prove the facts which are stated in them, it is the duty of the tribunal, officer or court engaged in trying the question to specifically and particularly state the special purpose for which they are admissible.

Mr. STONESIFER: I deny any such thing as that.

Mr. MCENERNEY: All right, Mr. Stonesifer.

Mr. STONESIFER: And the gentleman has no right to confine this board; you are investigating—you are the sole arbiters as to the sufficiency of this testimony, and you are not confined to any particular purpose or any particular reason; you are not pledged to give your reasons to anybody, to any court, or to any tribunal in the
579 State of California or in the United States, but you are the sole arbiters in this investigation of what you shall receive and what you shall do, and no one—there is absolutely no appeal

from any act you may do in this matter; you are not confined in any way by anything. If there was no other evidence before this board than the affidavits and your examination was based entirely upon affidavits, it would be sufficient. We are not governed here by the rules of court—technical rules as to the admission of evidence, but you shall examine and estimate as near as may be. You don't have to get down to facts and figures, or to dollars and cents, but as near as may be, you shall estimate. Anything which will tend in any way to throw light upon this subject is evidence before this board, and you have a right to consider it, a[illegible] you have a right to give it any weight you desire; and if one man comes in here and tells you, and you believe him, that the cost of this canal is so and so, you have a right to believe that man, even if he is opposed by a dozen other men. It is entirely in your hands, and no amount of evidence on one particular proposition shall govern you, even though it preponderates on that proposition, against your judgment; even that is the rule with reference to the admission and acceptance of evidence in courts of record.

Mr. McENERNEY: There is just one observation I would like to make before this matter closes; that is this: That Mr. Stonesifer and myself, when we were called to the bar, we were taught to believe, and I suppose we both believe, that courts are organized
580 for the purpose of administering justice; courts are places where justice is judicially administered. There are certain fixed and fundamental rules of evidence which guide or determine every body, it don't make any difference whether it is a court or a board of supervisors engaged in the trial of a fact, and one of the fundamental rules which govern all persons charged with the investigation of questions which affect the rights of individuals is, that a man shall be permitted to be confronted by the witness or witnesses against him; that he shall be permitted to know who they are; to look them in the face; to investigate their antecedents; to know whether they are qualified to give testimony upon the subject. Now, then, in the first place, we are entitled to cross-examine Mr. Dougherty; to know when he was an engineer of standing—he says so, but before his word shall be taken in evidence, we are entitled to look him in the eye and ask him when he was an engineer of standing, and to know where he labored, and to know when he became acquainted with the value of work. Now, if that is so, if those affidavits can go in, then I ought to be entitled to produce a hundred affidavits, and file them——

Mr. FULKERTH: Ten thousand of them, if you want to file them here.

Mr. McENERNEY: I don't want to file them, because I don't think they are proper to be filed. You are entitled to cross-examine the witness just as I am entitled to cross-examination. Now, the board of supervisors very properly and very justly gave me an opportunity to cross-examine Mr. Goodwin's estimate. He was appointed
581 by the board and occupies a semi-official position, reporting on this work. Now, if I am entitled to cross-examine him, and my request commended itself to the board as being very fair,

why am I not entitled to cross-examine these other gentlemen whom we have never seen and never known of, and whom we never heard of, and who are not here vouched for by the employment of the board?

Mr. STONESIFER: There is one other little remark I would like to make, and we had just as well settle right here the position that this board occupies in this investigation: You are not sitting here as a court; you are not sitting here investigating this thing as a judicial body; you are sitting here as a board delegated with legislative powers by the legislature of the State; you are sitting here as though you were a part of the legislature of this State, and you are making this investigation in a legislative capacity. That has been decided in numerous cases by our own supreme court and by the Supreme Court of the United States. Now, did you ever hear of the legislature of the State of California starting out to investigate a particular subject and being confined in that investigation by the technical rules of courts? Counsel on the other side will not say that the legislature of the State of California is confined in its investigations to any particular rule of law, but simply they go out and hear and receive what evidence they can upon a particular subject and they base their reports and their actions accordingly. If the legislature of the State of California sends a committee to the State insane asylum at Stockton to make an investigation, they don't go
582 there and sit as a court of equity or a court of law, but that committee goes to that asylum and talks with the inmates, and talks with the superintendent, and talks with the employees of that asylum; has a shorthand reporter who takes down what its investigations are, and it comes back to the legislature and there makes its report, and that report is received and acted upon. It is an investigation. And that is just what this board is doing today—simply making an investigation, and upon that investigation you are to estimate as near as may be—that is the language of the statute—"as near as may be" what your conclusions shall be.

Mr. FULKERTH: Gentlemen, I would like to say this in regard to the introduction of those papers: I think they are clearly admissible on one ground at least, if not on the general proposition that they ought to be evidence to guide and by which you should act in fixing these rates: They are simply admissible in evidence as a part of Mr. Goodwin's cross-examination. As stated by Mr. Stonesifer, Mr. McEnerney has asked him for the source of his information. He has given his own observation, his own knowledge, and he then asks if he had any information from any other source—from other people, and in that investigation he brings out these affidavits upon which Mr. Goodwin says he partly bases his conclusions at which he arrived. I say those are certainly admissible as a part of his testimony, and going to show upon what he at least partly bases the conclusions to which he has arrived.

Mr. MCENERNEY: The next objection I make to them is
583 that he made his report on the tenth of the month, and these affidavits are dated on the 17th, 18th and 19th.

Mr. STONESIFER: Well, that report ought never to have been filed here.

Mr. MCENERNEY: Well, it was filed.

Mr. STONESIFER: I know it was; so was this matter set for hearing on the tenth, but was continued at your instance.

Mr. MCENERNEY: Certainly he could not have reached his conclusions upon these affidavits which were made a week and a half after his report.

CHAIRMAN: Gentlemen, what do you say about the admission of these affidavits?

Mr. DAVIS: It seems to me that if those witnesses are important, they ought to be brought here.

Mr. OSLER: It strikes me they are admissible as far as showing where Goodwin got his information.

Mr. FULKERTH: You can't bring those people here; they are outside of the county.

Mr. DAVIS: There is information here, outside of anything else, as to what it costs to move dirt.

CHAIRMAN: Well, the affidavits should show they are experts—the affidavits say they are experts, but outside of that, we don't know whether they are experts or not.

Mr. OSLER: Well, I think all the bearing they have is, they show where Goodwin got his information.

Mr. MCENERNEY: They are a week later than this report, consequently he could not have used the affidavits in making his report.

584 Mr. STONESIFER: That is simply that they were made later; he may have had his information.

Mr. MCENERNEY: He don't say so.

Mr. OSLER: He has the information today, anyhow, that it is, from that.

CHAIRMAN: Gentlemen, let us pass upon that point and adjourn for lunch. I suppose it is in the power of the board to make a motion and have it seconded.

Mr. BARNES: I make a motion that we accept them as evidence, that is, as to the cost of moving earth.

Mr. DAVIS: I second the motion.

CHAIRMAN: Gentlemen, you have heard the motion. All those in favor say "I." (Motion carried.)

CHAIRMAN: So ordered, Mr. Clerk. The board will adjourn now until one o'clock.

Mr. MCENERNEY: Any objection to us taking those estimates until one o'clock, gentlemen?

Mr. STONESIFER: No.

Mr. FULKERTH: I would like to have the board make an order subpœnaing Mr. A. G. Patton as a witness. He is the railroad engineer on the Valley railroad.

CHAIRMAN: If there is no objection the board will make that order subpœnaing Mr. Patton, the railroad engineer. So ordered.

585 R. H. GOODWIN continued.

Mr. MCENERNEY:

Q. Mr. Goodwin, how did you arrive at the conclusion that there was a depreciation of 70% in the lumber employed in the construction of these works?

A. Well, it is from the usual practice; also from consulting with the Pacific Bridge Company.

Q. What do you mean by "the usual practice"?

A. The usual allowance for the deterioration of lumber.

Q. How much does it deteriorate in a year?

A. I consider about fifty per cent. in ten years.

Q. Thirty per cent. in ten years?

A. Fifty.

Q. Fifty in ten years; so its average life is about twenty years?

A. Well, some is eight years or ten. I take it in this case.

Q. Well, a good deal of this lumber has been in for 23 years, hasn't it?

A. Yes sir.

Q. Why didn't you arrive at the conclusion, then, that it had depreciated 100%?

A. Well, I thought I would give you a little something out of it; gave you thirty per cent of it.

Q. But you really thought, according to your observation and according to the standard which usually obtains, that there should be no allowance whatever for that lumber, didn't you?

A. Well, I would not give anything for a great deal of it.

Q. Yes sir. If it depreciates 50% in ten years, it depreciates another 50% in a shorter period than ten years; the depreciation would be very rapid.

A. Yes sir.

Q. So you would say that none of this lumber which was

586 23 years old had any value at all?

A. No sir.

Q. It had depreciated 100%?

A. Yes sir.

Q. Now, how much of that, according to your estimate, had depreciated that full amount?

A. Well, all that lumber that was placed in 1873 and there was a certain portion that was placed in 1878, and a certain portion, I believe, in 1883 or '4, somewhere in the neighborhood of that.

Q. Yes sir, you mean up at the headworks?

A. The headworks was in 1873.

Q. Yes sir; how much depreciation did you estimate there was in the headworks?

A. Well, I took it all in a lump.

Q. Have you papers to show?

A. I was just trying to think; I think it is in that schedule (showing).

Q. Where is that schedule of lumber? Here it is (handing schedule to witness).

A. You have it right there (showing).
Q. Have what?
A. There is the amount of lumber there, isn't it (indicating)?
Q. 941,806 feet?
A. I think it is. Allow me to see it a minute.
Q. Built in 1873. Now, you estimate that in——

Mr. STONESIFER: How much lumber was put in in 1873?
Mr. MCENERNEY: I will read them over, Mr. Stonesifer, now.
Mr. STONESIFER: All right.

Mr. MCENERNEY:

587 Q. You estimate that in the 37.967 miles built in 1873, 941,860 feet of lumber was used.
A. The structure as I found it; the material in the structure as I found it.
Q. You estimated, then, that in 1873, 941,860 feet of lumber had been used?
A. Yes sir.
Q. That is correct, is it?
A. If my information was correct and the same structure was there.
Q. I know, but you estimated it.
A. Yes, yes sir.
Q. You estimated that there was that amount of lumber.
A. Yes sir.
Q. You estimated that that lumber could be bought this day or *thing* the last two or three months at $34,679.40, in San Francisco or Oakland.
A. Yes sir.
Q. And you deduct 70% from that $34,000 on the ground that lumber so used in 1873 had depreciated 70%?
A. Yes sir.
Q. And you estimated the depreciation of 70% upon the price at which it could be bought in San Francisco or Oakland during the present season?
A. Yes sir.
Q. You estimated that on the 28.868 miles built in 1878, there had been used 632,660 feet?
A. Yes sir.
Q. Which you estimate, at the present price in San Francisco or Oakland, to be worth $17,617.70?
A. Yes sir.
Q. How much depreciation did you estimate to be on that lumber?
A. I think that is 40%.
Q. Forty per cent.; that is 18 years old.
A. Yes sir.

588 Q. How is it, if it be according to the standard which obtains — engineers and builders generally, that there is a depreciation of 50% in ten years, that you only estimate a depreciation of 40% in 18 years?

A. For the same reason; I thought I would allow you something for it. Very generous.

Q. Yes. Well, you were employed by the board to give them the truth about the matter, weren't you?

A. Yes sir.

Q. Now, then, if it be true that there is a depreciation of 50 % in ten years, what had your allowance or generosity to us in making it 40 % in 18 years to do with the matter?

A. It was in place and was really doing some service; it was worth something.

Q. So you thought it was worth 60 %?

A. I did.

Q. You recognize, don't you, as an engineer, that any lumber which performs an office in a structure cannot depreciate a hundred per cent.?

A. Not in 20 years.

Q. Nor in any period of time, if it serves any office at all.

A. Not if it is kept up.

Q. Well, if it is used for the same purpose for which it was devoted when it was new, it could not depreciate a hundred per cent., otherwise it would have all gone.

A. Well, it would not be as good as new.

Q. I understand that, but it could not have depreciated a hundred per cent., and that is the theory upon which you acted here, isn't it?

A. Yes.

Q. Now, I find for the 4.1 miles built in 1884, you estimate that 114,890 feet was used in the construction thereof, and estimated at the present price is found to be worth $3,221.40. Did you
589 allow—did you figure any depreciation on that?

A. Fifty per cent.

Q. 50 % on that. What year was that put in?

A. 1884.

Q. How is it that you arrive at the conclusion that there was a depreciation of 50 % in the value of lumber put in in 1884, when there was only a depreciation of 40 per cent. in lumber put in in 1878, six years before that time?

A. Well, I made the estimate that way.

Q. Well, you had something more than your mere fancy about it, didn't you?

A. Yes sir, I had.

Q. Well, now, what was it?

A. I have got the general usage; also I had men that were in that line of business, consulting with them and asking the worth of it.

Q. Did anybody tell you that lumber would depreciate ten per cent. more when in use only 12 years, over lumber which was in use 18 years?

A. No.

Q. Well, how do you arrive at your calculation that there was a depreciation of 50 per cent. in lumber put in in 1884, and there was

only a depreciation of 40 % in lumber put in in 1878, six years before that time?

A. Well, the structure may have had something to do with it; was materially sound and answered the purpose.

Q. Is that the fact?

A. In some cases, yes sir.

Q. Well, give me the instances which made your estimate of depreciation greater for a shorter period of time than for a longer period of time. Have you any data by which you can furnish
590 that?

A. No, I have not.

Q. Now, in which of these three items of lumber does the lumber used in the headgate or headworks of the canal figure?

A. In the first portion of it.

Q. Then you estimate that the lumber in the headworks has depreciated 70 %. Is that correct?

A. Yes sir.

Q. And that all of it has depreciated 70 %?

A. Well, generally, taking it in a lump. Some lumber is worth more than others. Some lumber will run 40 years, but the general run of lumber will go ten years, as I understand it.

Q. Yes sir. Now, was there any lumber which you found in the headworks, or which you calculated in the depreciation of the headworks, where you estimated the depreciation or deterioration to be in excess of 70 %?

A. I presume there is a small portion of it.

Q. Well, did you estimate any of it to have depreciated more than 70 % in arriving at the average of 70 %?

A. No, I just lumped it at that.

Q. Do you think there is any lumber there which depreciated less than 70 % and which is now worth, standing alone, more than seventy per cent., or I should say, thirty per cent. of its cost price; figuring it at the prices which obtain today?

A. There is some there; a small quantity.

Q. About how much of it?

A. I could not say how much.

Q. And how much do you think it has depreciated?

A. Well, I should think—I don't know exactly when it
591 was all put in there, the new lumber.

Q. Yes sir.

A. I suppose there was some put in there last year.

Q. Yes sir. How much do you estimate that to have depreciated?

A. Well, it would not have depreciated any.

Q. How much of it did you figure had been put in last year?

A. Well, I don't know as I made any note of that. I didn't make any note of that.

Q. Well, is this a mere arbitrary calculation upon your part, or conclusion, that there was a depreciation of 70 %?

A. In general, yes.

Q. Then you didn't reach it by any process of mathematical calculation?
A. No, I don't think anybody else could.
Q. You didn't, anyhow?
A. No, I didn't; there is some lumber in there which wasn't worth the packing away, some of it.
Q. Where is that particular lumber?
A. Well, there is some in the headgates.
Q. Did you see it?
A. I did.
Q. What use did it subserve there, any?
A. There is old piling that has been in there for 23 years.
Q. Does that subserve any use now?
A. Well, there is some new piling and some old piling, and I looked at the structure as it stands.
Q. I understand; but is there any lumber used in the headworks there that performs no function or office whatever in this system of works?
592 A. Well, some might think it performed functions and some would not I am not criticising the engineering portion.
Q. I am not asking what somebody else may think or what somebody else may not think; what do you think about it, Mr. Goodwin?
A. I think there is some lumber that could be done away with entirely.
Q. What, for instance?
A. Well, there is a little wing in there; I believe there are several other things.
Q. Well, what are the other things? What wing is it?
A. There is a wing there on what they call the island, that performs no function.
Q. How old is that?
A. I could not tell you.
Q. How much lumber in that?
A. I could not tell you.
Q. How much do you figure on that?
A. I could not tell you.
Q. Didn't figure any on that?
A. I did; I gave it all a quantity.
Q. Where is your figuring for that?
A. I didn't arrange and mark each piece of timber, you know, so I could designate each piece.
Q. I have no doubt about that, but you can tell us, I presume, generally.
A. Well, it is all in general there (referring to exhibit); there is no segregation; the piles, joists and floor, and caps, piles, etc., and flooring and sides, everything.
Q. Well, there is a good deal of the lumber on that dam
593 that you could not see, isn't there?
A. I don't know, as long as I could not see it; I only got it from information.

Q. Well, don't engineers sometimes know things which they do not see?

A. It ought to be there.

Q. Sir?

A. The supposition is, it is there.

Q. You suppose it is there?

A. Yes sir.

Q. Well, how old do you suppose that lumber is?

A. I don't know; I got my information from the man that first built it.

Q. Yes sir, and that is all the information you have about it?

A. Yes sir.

Q. You don't know how much of that dam has been replaced in the last seven years, do you?

A. I do not.

Q. You have estimated that none of it has been replaced, haven't you, except a fraction here and there?

A. I have taken the dam right there as so many yards in it——

Q. Yes.

A. And that it is to be placed right there now.

Q. Yes sir; and you have taken $34,000 worth of lumber, which you say is the amount would be necessary or would be required to make the dam as it is now constituted, and upon the theory that the lumber which has been used there and has been there since 1873—you have assumed that it has depreciated 70% in value, making about $25,000, you have averaged it?

A. Yes sir.

Q. Now, do you know how much of that lumber has been
594 replaced in the last five years?

A. No, I do not.

Q. Or about how much of that dam has been rebuilt?

A. I do not.

Q. In arriving at the conclusion at which you have arrived, you have assumed that none of it has been, haven't you?

A. No, because some of it is not worth anything.

Q. Well, have you assumed, in reaching the conclusion that there is a depreciation of 70%, that none of it has been rebuilt since 1873?

A. I average the whole thing; some of it is new and some of it is not worth anything.

Q. Well, averaging requires figures and calculations, don't it?

A. It does to a certain extent.

Q. There are certain elements which go to make up a sum total of so much before you strike a mean or an average, is that not true?

A. Yes sir.

Q. That is so, isn't it?

A. Yes sir.

Q. Now, I want to know if, in making up the sum from which you derive your average you assumed that any part of that head-

works, or rather that dam, had been rebuilt since 1873; did you or did you not?

A. Well, I thought it was a fair price placed in the lumber and all, and taking it from the dam through this 37 miles, in general, I thought that it wasn't worth over thirty cents on the dollar, the whole business, as it stood.

Q. Yes sir. How did you arrive at that conclusion, Mr. Goodwin?

A. Well, from the general state of the timber and the uses,
595 etc. Some was abandoned.

Q. Yes.

A. And some was not worth anything and liable to give out at any time—at any minute.

Q. Yes sir.

A. (continued). And as this was a proposition of what cash I would give for that, I said about thirty cents on the dollar all the way through. Now, as for segregating out each structure by itself, my memory is not long enough, there is over 35 miles of it, and my memory is not long enough to remember thirty-five miles and all the lumber.

Q. But you did, as a matter of fact, segregate them all and you have given us in detail the dam.

A. That gives the feet of each piece of timber; I took a piece of timber and marked it down as being a pile or cap or floor joist or flooring or braces.

Q. Yes.

A. But I didn't make a note of whether it had been in there 20 years or not.

Q. I asked you a while ago if there was any of it which had depreciated in your judgment more than 70%, and you finally said, didn't you, that you thought 70% was about as much as any of it had depreciated?

A. Well, yes sir—I will take that back, so far as that is concerned, because that which is abandoned is worth nothing, of course, and has depreciated more—to its full extent.

Q. How much has been abandoned and worth nothing?

A. That I could not tell right now.

596 Q. Have you a memorandum?

A. No, I haven't any at hand.

Q. Then you didn't know, when you were arriving at the conclusion that 70 % would be a fair percentage to assume that lumber had depreciated, that some of the lumber which you had assumed depreciated by being in there in use from 1873 down to now, as a matter of fact had only been in use a few years?

A. There might be.

Q. (Question read.) Do you mean that it may be you didn't know it?

A. I didn't know the lumber was in place, or how?

Q. Had only been in place for a short time.

A. I don't know how long; some of the lumber, of course, I didn't know how long it was in there.

Q. Yes sir, and some of it you didn't see?

A. Some of it, of course, I didn't see.

Q. Then, what basis did you use to arrive at the conclusion that it would be fair when you gave it an average depreciation of 70 %, when that might properly include this lumber which you didn't see and the length of the use of which you did not know?

A. As the structure was standing there and doing its function, doing what it was intended for, it was worth something.

Q. Mr. Goodwin, how do you arrive at the conclusion that the right of way for the first thirty miles was worth three dollars an acre and the balance $25.00 an acre?

A. Well, the first thirty miles of it was through a barren country. I asked the people that were conversant with the country there what would be a fair price.

597 Q. Is that all you know about it?

A. That is all I know about it.

Q. Whom did you ask?

A. I asked Mr. Drummond, who has lived there for a great many years.

Q. You asked him what would be a fair price for 900 acres for a right of way for the first thirty miles of this canal, did you?

A. I did.

Q. What did Mr. Drummond tell you? Is that the name? What does he do?

A. Drummond—he is a——

Q. How do you spell it?

A. D-r-u-m-m-o-n-d, I believe.

Q. All right; I didn't know I got it correctly. He told you what?

A. He told me that it would be two and a half or three dollars.

Q. Three dollars. What does he do? What does Mr. Drummond do?

A. I believe he is a rancher there.

Q. How long has he been there?

A. Been there for I know of 16 years.

Q. Yes; how many acres does he own there?

A. I don't know that.

Q. Did he tell you he thought his land was worth three dollars an acre?

A. That is outside of his district.

Q. He don't live on the line of the canal?

A. He lives on the line of the canal, but not in that first thirty miles of it.

Q. Which thirty miles does he live in, the second?

598 A. The second portion.

Q. Where did you get the estimate that the second thirty miles was worth $25.00 an acre?

A. Well, I took it from the general idea of the value of that country around there.

Q. Well, what guide did you have in reaching that conclusion?

A. I think that the selling price or appraised price would

give it; of course, being a stranger in the country, I had to rely very much on the people that lived in the country there.

Q. Well, what do you mean by "being a stranger in the country"?

A. Not being a resident there, I didn't know the price of the land itself, and I had to rely on outside people.

Q. Did some one tell you that the value of the land lying in this county below the canal was worth $25.00 an acre?

A. About that.

Q. Who told you that, Mr. Goodwin?

A. Well, I don't know; several told me.

Q. The land in this county along the line of the canal is only worth $25.00 an acre?

A. That is about what I thought.

Q. Then, how much of the land was in the county of Merced?

A. I could not tell you that.

Q. Well, how much of this canal is in this county?

A. That I could not tell you.

Q. Any idea?

A. Some ten or eleven miles, or twelve miles.

Q. Then there is about eighteen miles in Merced county of the last thirty miles?

599 A. I really don't know where the lines come in; there was no monument or anything, and I never took any note of them; I really don't know just where the line is.

Q. You estimate that there is about twelve miles of canal in this county?

A. I believe the assessor says, sir, there is about eleven and a half; I think that is what he says.

Q. Yes sir. Then, in the last thirty miles which you estimate to be worth $25.00 an acre, you include about 18 or 19 miles in the county of Merced, don't you?

A. Yes sir.

Q. How do you arrive at the conclusion that the land along the canal there is only worth $25.00 an acre?

A. Being the same character of land, on the same principle.

Q. Yes sir. Where does the character of the soil change? In the county of Merced? Or the value of the land, rather?

A. I think it must be in Merced county, but I would not be positive as to that.

Q. Yes sir. Now, what was the question you asked Mr. Drummond upon which you built this estimate?

A. I want to get some idea of the price per acre of the right of way, what his idea was, in this country.

Q. Yes sir. You didn't know anything about it yourself?

A. I did not, no sir.

Q. And don't have now, except what he told you?

A. Well, and what I have heard from other parties.

Q. Well, about the first thirty miles, he is the only gentleman who gave you the information?

A. That is the only one, excepting I would not give two
600 and a half an acre for it myself.

Q. Well, it has not been offered to you at two and a half, has it?

A. No sir, it has not.

Q. Well, you are not in the business of buying and selling, are you?

A. No sir, I am not.

Q. So your willingness to give or not to give would not form the test. Who else did you talk to besides Drummond about the value of this property?

A. Well, I don't remember exactly now. Several.

Q. Well, give us their names, and places of residence, and what they told you, and what you asked them.

A. I believe I asked the assessor, this county assessor.

Q. Yes, this county assessor.

A. Yes sir.

Q. Is that it?

A. This county, Stanislaus county, yes, sir.

Q. Yes sir. He told you what?

A. Well, I don't recollect now what he did tell me.

Q. Well, the soil is just as fertile and of just as high a character and quality for the first thirty miles as it is for the last, isn't it?

A. I should not judge so.

Q. You should not?

A. No sir.

Q. What difference is there?

A. One is a fine loam, and the other is a sage-brush country; nothing [redacted] to grow on it. While I was there it looked like slickens—what we call slickens.

Q. Was it soft?

A. Yes sir, I suppose it would be pretty soft when it was muddy,
but it looked like slickens, and you would go down to your
601 hubs every minute.

Q. Yes sir, and what would it do in dry weather?

A. Well, there was nothing growing on it while I was there; it is a barren waste of land.

Q. As a matter of fact, it is adobe, isn't it?

A. It is hardly an adobe.

Q. Well, isn't it what engineers call an alkali and an adobe?

A. Yes, something of that kind.

Q. Yes.

A. Yes, but it is hardly a real adobe.

Q. Yes, but it is an alkali and an adobe, isn't it?

A. Yes, I suppose it is.

Q. Isn't that so known among engineers?

A. Yes.

Q. When I asked you this morning if that wasn't an adobe and more expensive to excavate than the lower 30 miles, didn't you tell me it was of the same general kind, quality and character of soil, and there was no difference between them?

A. Not that; I meant as a classification on earthwork.
Q. Yes sir.
A. We have a classification on earthwork, hardpan and other material; I spoke of it in that way.
Q. Didn't I ask you if it was an adobe, and didn't you tell me it was not?
A. Yes sir, I believe I did.
Q. Yes sir, and don't you know it is and has been ranked by the engineers of this State as alkali and adobe?
A. No, I don't know as it has, because I never heard it classified any way.
Q. Yes sir. Well, isn't it an alkali and an adobe?
602 A. Well, I don't know; from what I see, I don't think it is.
Q. Well, you say your wheels would sink into it in the winter time clear up to the hub.
A. I suppose it would; I wasn't in it in the winter. I wasn't there in the winter.
Q. No, but your knowledge and familiarity with soils in your career as an engineer will enable you to say whether that is a fact or not.
A. I would not call it an adobe soil.
Q. Well, it gets to be very thick, don't it, and muddy and sticky?
A. Yes sir.
Q. And it is hard to excavate in winter, at least, isn't it?
A. Yes sir.
Q. Yes sir.
A. I don't know whether that would be, but an adobe is.
Q. Yes sir. Wouldn't it, in your opinion, be difficult and costly and expensive to excavate that earth for the first thirty miles if it were done in the winter time?
A. No sir, not where that canal is situated, it would not.
Q. No? Then it is not sticky.
A. Well, when it is wet, of course it is sticky; all stocks more or less then.
Q. Isn't it more expensive and costly to excavate this sticky alkali and adobe than fine loam?
A. Certainly it is.
Q. Yes sir. Now, in arriving at the estimate which you made here, six and a half cents, you assumed that that was loam, didn't you?
A. I assumed that it was earth.
Q. Well, didn't you assume that it was loam, to ask my question again?
603 A. Well, earth counts as loam, sand or anything else. I might have thought it all hardpan, but without any blasting I classify it all as earth, the adobe or anything else; it would be all classified as earth.
Q. Yes, I don't care what you would classify it as; does the same price obtain for excavating all kinds of earth?
A. Unless it is specified first.
Q. Well, as an adobe, first?

A. It does if you can plow it.
Q. No, no, but hardpan?
A. Anything that you don't have to use explosives on is.
Q. Yes sir. Then do you mean to tell this board that the same price obtains for the adobe as for fine loam in excavating work?
A. On a general line of canal of that kind, yes sir.
Q. Say five miles of adobe and five miles of fine loam, does the same price obtain?
A. I think you can get the same work at the same price.
Q. That is your experience?
A. That is my experience.
Q. Have you any instance that you could furnish us of that?
A. Not at this present moment, I can't think of anything, but I think I can get them for you.
Q. Have you any means at hand from which you derive that?
A. I haven't here, no sir.
Q. Now, you have six station buildings, $4000.00. Will you kindly describe to the board what those station buildings are, and what they are used for?
A. They are small cottages.
Q. Yes sir.
604 A. And they are used for the stationmen; I suppose they call them the stationmen; who take care of the canal. They are small buildings. I didn't take any measure of them. I just merely estimated, on my opinion, they were worth what I put down there.
Q. Is there a barn with any of them?
A. I believe there are small barns with them.
Q. With each of them?
A. Yes sir, I think so.
Q. What are they used for along the line of the canal?
A. Well, they have a horse and buggy, I suppose.
Q. They are the houses where the men employed along the canal live?
A. Yes sir.
Q. And they have barns with them, each of them?
A. Yes sir.
Q. How many rooms in the houses?
A. That I could not tell you, I didn't examine them; just took a general look.
Q. What else did you find there besides a house and a barn, at each station?
A. That is all that is requisite, is a barn and a house.
Q. Did you find anything else there?
A. Well, I didn't look around particularly.
Q. Any outhouses?
A. Might have been some.
Q. You estimate those buildings to be worth $600.00 apiece.
A. Yes sir.
Q. Mr. Goodwin, the bridges which are built in this section of

country are usually built for or estimated by the—according to the running feet, are they?

605 A. I believe they are.

Q. Plain bridges. What is the usual price estimated for the construction or building of bridges—plain ordinary bridges?

A. Well, I don't know; some contractors give different prices.

Q. Well, the Pacific Bridge Company has built some in this county, hasn't it?

A. Yes sir, a good many.

Q. What does it usually get for them?

A. I don't know.

Q. Well, about how much? Have you any idea?

A. I could not tell you; I have no idea. I didn't go at it that way.

Q. I know; but don't you know?

A. No, I don't.

Q. Don't you know any method of calculation except the one which you yourself pursue?

A. I think they go by the same method.

Q. Yes. Do you know any other method or calculation except this one?

A. That is all; I go to the material itself. Some have a guesswork of doing everything, so much a foot; they are in the business and they know pretty well.

Q. You don't know anything about that?

A. No, I don't.

Q. How much the price for a running foot is and has been in this county, you don't know that?

A. No, I don't know that.

Q. You haven't arrived at it by comparing any results in the practical administration of affairs in this or adjoining counties?

A. No sir, not in the county work.

Q. How much per running foot did the bridge cost which you saw constructed at La Grange?

A. Well, I don't remember how long it was.

606 Q. Have you no idea? Was it a mile long?

A. No, it wasn't so long.

Q. About how long?

A. The canal was 70 feet at the base and——

Q. Well, about how much, can you give us any idea, the cost per running foot?

A. I could not tell you.

Q. Now, how do you make up the figures $25,723.40 for engineering, superintending, officers of company, stationery and printing, law expenses and other incidentals?

A. First by the usual usage; second by figuring up what a camp outfit will cost and what the surveying will cost.

Q. Have you the figures which, added together, make this $25,723.40?

A. No, sir; as a general thing, it costs about six per cent. for the engineering, and I have allowed the other four per cent. for the

balance, giving you a very liberal estimate, as ten per cent. on the capital invested in that is for contingent expenses.

Q. So that engineers' expenses, according to your idea, in usual practice, amounts to more than the legal expenses, do they?

A. In the general line of things.

Q. The engineer gets more than the lawyer?

A. Well, that counts everything; the engineer don't get all of that—there is a good deal of other expenses in there.

Q. You didn't arrive at this estimate of $25,723.40 merely by guessing at it, did you?

A. Well, if you take and figure that up, you will find it is ten per cent. upon the amount invested.

Q. Oh, you subtract the $25,000 from the $312,358.00 then,
607 and you get that, do you?

A. Yes sir, if I didn't make a mistake. It is meant for that.

Mr. McENERNEY (figuring): Well, that won't give it.

A. Won't it?

Q. You tell us——

A. Was it very much out?

Q. Just about three thousand dollars, but I don't suppose that amounts to much.

A. No, it don't amount to much on the total.

Q. Don't you estimate the ten per cent. upon the whole price, including the engineers' and lawyers' expenses and incidentals, etc.?

A. How is that?

Q. Is not the ten per cent. calculated upon the full price of the work?

A. This—I see I didn't put in this other.

Q. You didn't put in what other?

A. The right of way; it is——

Q. How much is the right of way?

A. I think you will find the figures there (showing).

Mr. McENERNEY: Well, that is within a few cents. So that you estimated the ten per cent. for engineering expenses and other incidentals upon the value of the work, omitting the value of the right of way. That is the way you got at it?

Q. Have you ever operated a canal or an irrigation company?

A. No sir.

Q. Have you ever been employed by one?

A. Not in operation.

Q. Sir?

A. Not in operation.

Q. No. What has been your experience with respect to the
608 cost of operating one?

A. Well, as I say, I have had nothing.

Q. You have had nothing. Well, you undertake to report here that the operating expenses of this canal ought to be, per year, $13,250.00.

A. Well?

Q. Well, upon what do you fix that? What information had

you? That does not come within the line of an engineer's duty, does it?

A. No, it does not.

Q. No. Well, what do you know about that—anything?

A. Well, I can't really say as I do. I merely take it as what I think would be a good estimate on that.

Q. Yes.

A. From what I see and hear of the people that operated it; I have not operated it.

Q. Well, what do you see and hear about the people who have operated it?

A. The most of my information comes from Mr. Drummond, the former superintendent.

Q. When was he superintendent? When did you see him?

A. Within the last three months.

Q. When was he superintendent?

A. I forget when he was superintendent; anyway, nine years ago that I know of.

Q. Did he tell you nine years ago that the operating expenses were $13,250.00?

A. He did not, because I never questioned him at all about it.

Q. Then you got none of your information about operating expenses from him?

A. I did, two months ago.

609 Q. What information did you get from him?

A. He gave me the information in regard to the number of men and things generally, there.

Q. He told you what—that there were six sectionmen?

A. Yes sir, he did.

Q. When did he tell you there were six sectionmen at work on that place?

A. About a month ago.

Q. Well, he told you a month ago, or did he tell you a month ago that at the time he told you there were six sectionmen at work on that place?

A. That is what I took it; that is, section or station men.

Q. Sectionmen?

A. Sectionmen.

Q. And because he told you that, and without any other information upon the subject, you reported it here to the board, did you?

A. I did; with my own knowledge of what it would take or what it ought to take.

Q. Yes sir. Well, how many do you think it ought to take, as a general thing?

A. It is one to ten miles; that would be about seven.

Q. Well, what do you know about that? What experience have you had in the matter?

A. As I say, I never operated any; my work quits when it is completed.

Q. That is your opinion of what the thing ought to cost?

A. That is what my idea is.

Q. Yes sir, but that is not in a line with your business, and you had no practical experience with it.

A. That is right.

Mr. McENERNEY: That is all.

610 Cross-examination.

Mr. STONESIFER:

Q. You were asked a while ago by Mr. McEnerney for your reasons why you based your estimate of six and a half cents for moving that dirt to be a liberal estimate and you stated that, among other things, that from your own knowledge of what such things cost. Now, will you give us in detail what you know about that; how you figure that out from your own knowledge of what things cost.

A. Well, I generally take and find out the amount of cubic yards to be moved; then I rig up a camp, take the running expenses of the camp, and see how much it goes a yard. If it runs for two years, why I take it on a two years' basis, and by using a certain number of scrapers and a certain number of plow teams, with the going wages and price of supplies, etc., I derive my number of cents per yard or price per yard.

Q. Do you know what scraper teams cost?

A. I do, sir.

Q. Know what it costs to keep them?

A. Yes sir.

Q. Know what the price of lumber is?

A. Yes sir.

Q. Know what—in other words—and you know what a camp outfit is worth?

A. Yes sir.

Q. And what all is necessary, tools and machinery, to make up that outfit?

A. I do, sir.

Q. And teams, you know what they are worth and what they can do, do you?

A. Yes sir.

Q. And from that, you are able to say what it will cost to perform this kind of work?

A. Yes sir.

Q. And from that you have estimated that six and a half cents is a very liberal estimate?

A. I do. I have, yes sir.

611 Q. And you say it can be done for much less than that.

A. Yes sir.

Q. You say it can be done for three-fourths of a cent less?

A. Yes sir.

Q. Now, if the canal was built by these machines that they built that with, not scrapers——

A. Excavators.

Q. (continued).—excavators, can it be done still cheaper?

A. Yes sir.
Q. About what can it be done for with them?
A. From information, I think it can be done somewhere in the neighborhood of four and a half cents or five cents.
Q. Yes sir. You have been over the whole line of this canal, haven't you?
A. Yes sir.
Q. From the dam to its terminus?
A. Yes sir.
Q. And you have walked over all that distance, have you?
A. Every foot of it.
Q. And surveyed every foot of it?
A. Yes sir.
Q. And you have spent how much time in doing that?
A. Ten or twelve days—fourteen days.
Q. You observed everything that was used in connection with that canal plant that was necessary to the use and distribution of the water of the canal, did you?
A. I did.
Q. And you observed it in detail, did you?
A. Yes sir.
Q. And from your observation and from your information, are you able to say and do you now say, and what do you now say is the value of the canal, ditches, flumes, water chutes, and all other property actually used and useful to the appropriation and
612 furnishing of the water of that canal to the inhabitants and to the people situated below the canal, belonging to and in the possession of this company?
A. In its present state?
Q. Yes sir; what is your estimate of the value of that property?
A. $251,000.00.
Q. Is that a liberal estimate of the value?
A. I think so.
Q. And have you given a liberal estimate of the number of cubic yards of dirt excavated in the canal?
A. A very liberal one.
Q. A very liberal one. In going over this canal, did you observe the country lying below it?
A. Well, a mile or two.
Q. Yes.
A. For a few miles; as far as the eye would reach.
Q. As far as you could see. How much, in your judgment, how much land lies between this canal—estimate it as nearly as you can—how much land lies between this canal and the San Joaquin river?
A. Well, it varies.
Q. All I want is an estimate, as nearly as you are able to make.
Q. Probably six or seven miles.
Mr. FULKERTH: You mean as an average?
A. As an average; some of it, I think, is about 15 miles, maybe a little less. I took it from old work that I done down there.

Q. Yes, you superintended the construction of a railroad line at one time, didn't you, through that whole country below this canal?
A. Yes sir.
Q. From Firebaugh to Dutch Corners?
613 A. To Dutch Corners.
Q. About 50 miles?
A. About 50 miles.
Q. All this distance that is below the canal?
A. Yes sir.
Q. And you say there is a territory below the canal of about what length? The canal, you say, is about 71 miles long; how about what is the length of this territory lying below it, as nearly as you can get at it?
A. About 50 miles.
Mr. FULKERTH: What do you mean by that? It covers 50 miles of territory?
A. In length.
Q. And you say that the territory will average from six to seven miles wide?
A. Well, I should say the average would be from—yes, seven miles.
Q. Seven miles?
A. Yes sir.
Q. Then that would make it in the neighborhood of 350,000 acres of land lying below the canal?
A. To this railroad?
Q. To the river.
A. Oh, to the river.
Q. Yes sir.
A. Yes, that would be about it.
Q. And susceptible of irrigation from this canal?
A. Yes sir.

CHAIRMAN: How many acres?
Mr. STONESIFER: 350,000.
CHAIRMAN: How much of that was irrigated?
Mr. STONESIFER: We haven't got to that yet.
Mr. MCENERNEY: I suppose that Mr. Stonesifer's theory is, we only ought to be paid for what is susceptible of irrigation
614 rather than that which is irrigated.
Mr. STONESIFER: No, no; we will be more liberal than that. We simply want some information here as to the country below the canal.
Mr. MCENERNEY: If the board can pass an ordinance making the people take the water, whether they want to or not, that might be a proper item.

Q. Have you made some investigation as to the amount of land below the canal that is being cultivated and irrigated?
A. Yes sir, I have, a little.
Q. Yes, sir. What, in your judgment, from the investigations

you have made, is the amount of land below the canal that is being irrigated?

Mr. McENERNEY: Now, we most certainly object to that, on the ground it is hearsay and not proper. He can testify to what facts he learned, and the board can arrive at that conclusion; but to permit Mr. Goodwin to testify what, in his opinion, is the amount of land that has been irrigated, from what he has heard, it seems to me is pushing the thing a little too far. He can tell what he has found out, and the board can determine. If the board has any doubt about that, I would like to appeal to Mr. Fulkerth about that question—whether Mr. Goodwin is entitled to testify as to the number of acres that, in his opinion, is being irrigated.

Mr. STONESIFER: From his investigations, my question is.

Q. You have inquired, haven't you, Mr. Goodwin?
A. I have, to a certain extent.
Q. From people living there?
A. Yes.

615 Mr. McENERNEY: Well, I submit "people who live there," he cannot testify to what they say; they should be brought here.

Mr. STONESIFER: He says he knows from inquiry and observation.

Mr. McENERNEY: Has Mr. Fulkerth given his opinion that that is correct testimony for the board?

Mr. FULKERTH: I don't know that I am called upon to advise the board. I didn't know that I was——

CHAIRMAN: Well, what does the board, the members of the board, think about it? Do you want Mr. Fulkerth's opinion?

Mr. DAVIS: Yes; I would like to hear his opinion on it.

Mr. TOOMBS (chairman): Mr. Fulkerth, you will please advise the board.

Mr. FULKERTH: I think that Mr. Goodwin can testify to anything that he knows in regard to the subject.

CHAIRMAN: To what he knows.

Mr. FULKERTH: Yes sir, and whatever he has learned from his own observation.

CHAIRMAN: Well, that is what he knows.

Mr. FULKERTH: Yes sir.

CHAIRMAN: Yes, what he knows.

Mr. FULKERTH: Whatever he has learned—whatever he has seen he can testify in regard to that.

Mr. McENERNEY: We have no objection to that at all; if he has seen any land over there irrigated, of course he can testify to that.

616 Mr. STONESIFER: Well, of course, we haven't surveyed out every piece of land, and gone and looked at every man's ranch that is below the canal; we can only estimate and give our judgment, as nearly as may be; we are not here—we have not, and this engineer has not, done that. If he had been sent out by the board to survey every man's ranch below the canal in order to as-

certain how many acres he was actually irrigating, he could not do it in a year.

Mr. FULKERTH: I would not have Mr. Stonesifer understand that my opinion is he would have to bring every man before this board to testify to the number of acres he irrigates, because the law does not contemplate any such course as that; you must investigate as nearly as you can and get such information as you can of the people to make the estimate. I think if Mr. Goodwin made an investigation or has sufficiently observed to be able to form an estimate, he would have a right to give his estimate.

Mr. MCENERNEY: You don't think what somebody told him is a proper element to arrive at an estimate, do you?

Mr. STONESIFER: I claim that.

Mr. MCENERNEY: If Jones down at Firebaugh told him he irrigated a thousand acres, he don't know whether he did or not.

Mr. STONESIFER: Yes sir, if Jones told him he irrigated so much land, that is evidence before this board.

Mr. MCENERNEY: I am asking Mr. Fulkerth.

Mr. STONESIFER: That is my claim.

Mr. MCENERNEY: Yes, I know that, but I ask Mr. Fulkerth.

Mr. FULKERTH: I would like to ask Mr. Goodwin: Can
617 you make a reasonable estimate as to the number of acres that are under cultivation? Can you make a fair estimate of it from your observation, and from what you know and have heard?

A. I think it would be in round numbers—I think there is about sixty thousand acres.

Mr. FULKERTH. Now, how do you arrive at that conclusion?

A. From the fact that I have done former work there and went over this strip of country and saw land irrigated.

Q. Will you give the board all the sources of your information?

A. My information there would be observation.

Q. Well, state it.

A. Well, I went over every foot of the canal, and I take the maps—our State maps, and as near as my memory would carry me, I think there is about 60,000 acres that is under cultivation, or under irrigation.

Q. By this canal.

A. By this canal; and there is land that is still under irrigation, that is overflowed, between the grade that I put up nine or ten years ago and this line, that I am not including.

Mr. STONESIFER. How much is that? How much do you estimate that to be?

A. Well, it is good forty miles by a mile and a half to two miles wide; say a mile wide or a mile and a half wide, overflowed.

Mr. FULKERTH. Does that form a part of the 60,000?

A. No, that would be different; that is waste water in there that has overflowed in there. There is no check system; in fact,
618 the grade that we put up is a levee for it and backs it up. I drove over the grade for a good many miles.

Mr. STONESIFER: That would be in the neighborhood, than, of 40,000 acres?

A. About there.

Q. You say there is about 40,000 acres of land that is irrigated, not to alfalfa but wild grass; but whose land is that that is flooded?

A. The property of Mr. Miller.

Q. Mr. Miller's There is a regular system by which this water is conveyed from this canal over this land, isn't there? That is, there is a way provided for the water to get down over it, and there were levees in below to hold the water so as to make it flow over the land, and there was gates in the embankment?

A. Yes, the water comes down through ditches and is backed up by this levee, and they left openings every once in awhile, and they would bridge it and had put gates in there.

Q. For the purpose of controlling this water?

A. I suppose so; it looked like it.

Q. Yes sir. Was that land pastured? Was it?

A. Yes sir, there were cattle running on it.

Q. Cattle on it.

Mr. DAVIS: Is the 60,000 acres all in this county?

A. Oh, no, that is the whole thing.

Mr. DAVIS: The whole thing.

Mr. STONESIFER: I think he testified that there is 11½ miles in this county. I think the report shows that.

WITNESS: No, the report does not show that; I don't know
619 where the county lines run.

Mr. STONESIFER: Well, I think that is immaterial, anyhow.

Q. There seemed to be plenty of water in the canal, did there, for the irrigation of all this land you have said was under irrigation?

A. When I started in the canal was carrying all they could.

Q. All it could.

A. To the top notch.

Q. Well, when you came along there, was the water running over this 40,000 acres? Was it running down from the canal over it?

A. I didn't see the source of it. It came from the canal, but there was dead water there.

Q. Yes. I believe that is all.

Redirect examination.

Mr. MCENERNEY:

Q. When you say that the value of this system is $250,000, what do you mean, Mr. Goodwin?

A. I explained it this morning; that I take the cost of construction at the present date, and deduct the decreased value of the lumber, and also what would be required in excavating the silt and deposit to bring it to the same cross-sections that was figured on in the first cost.

Q. That is all you mean by the value of it?

A. Yes sir.

Q. You mean by the value of it, the cost of duplicating that system, less appropriate depreciations for its age?

A. That is right.

620 Q. Now, you say that there are 60,000 acres of land supplied with water by this system?

A. I should judge so.

Q. Yes, sir. Well, now, upon what do you build that judgment?

A. From my observations; that is one thing.

Q. What observations?

A. I made no survey; it was merely an eyesight survey; and, knowing the points of that country pretty well, and taking the map—Mr. Hall's map of the San Joaquin valley, and taking the points I did know, that irrigation system ten years ago (which must, I suppose, exist today) I take it that it was about 60,000 acres that was irrigated.

Q. Yes sir.

A. That is in round numbers.

Q. How many of those acres do you estimate to be in this county?

A. That I don't know.

Q. How many in Merced?

A. I could not tell you.

Q. How many in Fresno?

A. I can't tell you.

Q. Well, now, you see, perhaps it may be clear to others, but it is not to me. Have you no figures or facts in your mind upon which you base that estimate of 60,000?

A. I have the line of the canal in my mind.

Q. Yes sir.

A. And I know the territory pretty well.

Q. Yes.

A. And, as I said before, taking this map and putting these points on the map that I do know, I have arrived at that conclusion.

Q. How many points? What do you mean by putting these points on the map?

621 A. Well, I would locate a certain ranch that I knew was under cultivation, such as the Santa Reita and such as the Poso.

Q. What is the first name?

A. Santa Reita.

Q. How many acres has that under irrigation?

A. I could not tell you.

Q. How many did you estimate was under cultivation there?

A. I could not tell you; I have lost the card that I made the estimate on, and the maps are all in San Francisco. I have lost the card.

Q. How many acres do you think were in there that went to make up your estimate of 60,000?

A. Oh, I suppose about 20,000 or maybe 25,000; I could not state with any degree of accuracy.

Q. Well, would 15,000 be a fair—that would be an under estimate, anyhow, wouldn't it?

A. It would be, I think, an under estimate.

Q. Well, now, give us the next ranch.

A. Well, I have in mind at that time—I have in mind from the Santa Reita out to Los Banos; there is quite a strip of country in there.

Q. You say from the Santa Reita to Los Banos, about 15,000 acres are under irrigation?

A. Well, in that district.

Q. Who are the persons by whom it is owned?

A. Mr. Miller is the principal one.

Q. About 15,000 acres, you think, in that district?

A. Yes, I think so.

Q. Now, give us the——

622 A. I cannot go into details; just approximate.

Q. You tell the board, in your judgment there is 60,000 acres irrigated by this system. Can't you give us any more detailed estimate than that?

A. No, I cannot; it is 60 miles long. If I had a map here, I could point it out for you.

Q. Can't you get one?

A. No, I don't think there is one here; I have looked all around this morning. It starts in where it is only a mile to the river, and then it runs along to Firebaugh where it comes near—almost to the river, then it widens out again.

Q. You say there are 350,000 acres of land between the canal and the river, suitable to irrigation?

A. Yes sir, I suppose there is.

Q. Well, why stop short with 60,000 under irrigation? Why not say 120,000?

A. Well, I am merely taking it as of a certain length and breadth.

Q. Well, you don't really know anything about it?

A. I have never made a survey, no sir.

Q. And have no means of knowing how many acres really are under irrigation?

A. Not certain, no sir.

Q. Nor approximately, have you?

A. I don't think it would be very approximate, anyway.

Q. It is a mere guess on your part; that is all, isn't it?

A. Well, I think I came pretty near it. That is not a guess.

Q. Well, now, the 45,000 acres of it, allowing this Santa Reita and Los Banos portion of it to be 15,000 acres, if it is more than

623 a guess, will you furnish us what sums make up the 45,000 acres?

A. I haven't anything with me to corroborate anything.

Q. Well, after having stated, in your judgment, 60,000 acres of land were cultivated, the only lands you can specify as having been under cultivation and being included in that 60,000 acres is a stretch of country from Santa Reita ranch to Los Banos, covering say 15,000 acres. Is that correct?

A. That Santa Reita district, as I understand it, took from Firebaugh to Santa Reita and then westward to Los Banos.

Q. Then from Firebaugh to Los Banos, you think that 15,000 acres were cultivated?

A. I don't think it would.

Q. Irrigated, altogether?

A. I hardly think it would.

Q. How much?

A. I say I haven't anything here to corroborate it.

Q. Well, you said 25,000, and we took 15,000 as a conservative figure.

A. Well, then, there must be in that district about 15,000. I know that I counted sixty sections that were under irrigation by Mr. Hall's map—that is, I should say, 100 sections, that is 64,000 acres of land.

Q. Full sections?

A. No, giving and taking.

Q. Some half and some quarter sections?

A. Well, within the district under irrigation about 100 sections.

Q. Where is Hall's map?

A. I don't think there is one in town.

Q. When was it printed?

624 A. I don't know; it was lately. It is to be had at Sacramento; it is a State map.

Q. You haven't any with you?

A. I have nothing with me.

Q. So you say Mr. Hall's map shows there are 64,000 acres of land in irrigation from the San Joaquin and Kings River Canal and Irrigation Company's ditch?

A. That is what was marked out there.

Q. You say they added up 64,000 altogether?

A. I added it up, about a hundred sections.

Q. Well, say between 90 and 110, then.

A. Well, something like that.

Q. It was over 90, was it?

A. Yes, over 90.

Q. And less than 110?

A. Yes; about 100.

Q. What was this testimony that you gave about 40,000 acres of land; where is that land?

A. It is a strip of land lying along this railroad that we built, and was supposed to be entirely on Miller's land.

Q. Yes sir.

A. That was the supposition when we started.

Q. Yes sir.

A. As I was driving along the canal or bank or grade, it served as a levee for this water and spread it out.

Q. That is the railroad embankment.

A. Yes sir, the railroad embankment. I imagine that we drove about 15 miles that way, and knowing the nature of the country, and seeing that that was flooded, I know that the back country was flooded, that is all. I know that just of my knowledge of that country.

625 Q. Let me hear that again, please.

A. On my knowledge of that country and the grade, if that was flooded where we were going along, it must necessarily be flooded back of it; so that would take in a strip of about 40 miles in round numbers.

Q. One could not be flooded without the other?

A. No, there had to be water in there.

Q. So you concluded from that fact that 40,000 acres was under irrigation from this canal in that manner?

A. I would judge I saw most about 20,000 of it.

Q. Yes sir. When was that you were there?

A. When I built that? That was in 1887, I think.

Q. Yes. Well, that is the time that you saw the land flooded, did you?

A. Oh, no sir.

Q. When? I want to know when it was.

A. It is about a month ago. Within the last——

Mr. STONESIFER: While you were making this survey.

A. While I was making this survey.

Q. Where were you driving?

A. From the Canal farm towards Dos Palos.

Q. And a strip of 40,000 acres was submerged?

A. I made a mistake; I thought 40,000. There is only about 13 miles, I think.

Q. Yes.

A. And I should judge it to be about a mile and a half or two miles wide along there. Well, be about 16,000 acres.

Q. 16,000 acres. That is all.

Mr. STONESIFER: That is all. Well, what are you going
626 to do? Going to proceed?

Mr. MCENERNEY: If the board wants me to go on, I will go on and take the tail end first.

CHAIRMAN: Do you wish Mr. Grove, the assistant engineer?

Mr. MCENERNEY: Well, I suppose—I did intend to ask, and I will ask Mr. Goodwin a few more questions.

Q. This table you made up was made up in collusion with Mr. Grove?

A. Yes sir.

Q. And all the tables you have presented here were his tables and your tables?

A. Yes sir.

Q. He has no separate figures?

A. No sir.

Q. But were arrived at after consulting together and conference?

A. Yes sir.

Mr. MCENERNEY: That is all. We don't care for Mr. Grove.

Mr. STONESIFER: Mr. Grove is the deputy county surveyor, and he is here, if you want him. If you want to ask him any points, he is here.

Mr. MCENERNEY: I don't desire to. I suppose he stands upon Mr. Goodwin's testimony just given. Is that correct, Mr. Grove?

Mr. GROVE: That is correct, yes sir.

CHAIRMAN: Who is the next witness? Have you any other witness? Do you want to proceed? Have you any other witness?

Mr. STONESIFER: Yes sir, we have other witnesses. We will call Mr. Wagenheim.

627 R. H. GOODWIN, recalled as a witness for petitioners, testified:

Mr. STONESIFER:

Q. Now, Mr. Goodwin, in your survey and in your estimate of this value of this canal and works and property, have you taken pains to go into accurate detail in the matter?

A. I have, sir.

Q. Where are those papers?

A. There are some there (indicating).

Q. Now, will you explain to the board the difference between the survey and the examination that you have made and the examination that these other gentlemen have made—engineers of the company here; here is their papers and there is yours (handing). Now, will you explain to the board the difference between the examination that you have given to it and their examination.

A. Well, as nearly as I can see, that he has adopted one way of making his estimate, and I have adopted another way. If I rightly understand from the testimony, he is taking the canal as it stands, as he finds it on cross-sections, on an average of four miles apart, and I have taken the original data or the cross-sectioning from the office for our information and used that as a basis, and have taken my cross-sections or center depths as nearly as possible from a thousand, two thousand, and I think the extreme was three thousand feet.

Mr. FULKERTH: Some less than that.

A. There are some 700 and some at 200; the average would be a thousand feet about.

628 Q. And you actually measured, did you, the length of the canal from the beginning to its terminus?

A. Yes sir.

Q. Every foot of it?

A. Every foot of it.

Q. You did not guess nor take for granted anything respecting your measurements, did you?

A. I did not, sir.

Q. Did you estimate anything except from actual measurement?

A. In the woodwork, is that, or the earthwork?

Q. Well, we are speaking of the earthwork now.

A. Of the earthwork; well, there is nothing that I estimated excepting the depth of the water once in a while; of course, the depth of the water, that didn't cut any figure with me, but the depth of the grade line; I didn't use the ground as it stood, but the grade line from point to point.

Q. Now, explain to the board the difference that there is in the quantities in your survey and in that of these other engineers.

A. In taking a thirty-foot base, as long as it is even quantities, why it is even on both sides, and now taking for granted it is 70 miles long——

Q. Well, you measured it, didn't you?

A. Yes sir, but then the canal is longer; those are the round numbers and are easier to get at.

Q. Yes sir.

A. I believe the total quantities of yards is 3,268,800, I think.

Q. Here is the report (handing).

A. Yes sir, that is correct, and taking, as I said before, a 30-foot base, it would make an average cut of five and a half feet,
629 center cut; but taking my estimate of the base, the estimate of the full quantities, bringing it to the same base, it is only a cut of 3.8 feet, leaving say nearly one and three-fourths feet difference—bringing it down so we can see it easy—between our two estimates. I think that I am nearer right because I have examined the books of the company, and have compared their returns, and I am still higher than theirs by over 200,000 yards.

Mr. FULKERTH: How is that? I didn't understand, Mr. Goodwin.

A. I have examined the books of the company, or the field books—the field books and the returns, I have a copy of them here——

Q. And the field books of the company show that the number of yards excavated is some two hundred thousand yards greater than your estimate?

A. Yes sir, I have compared at different points and down to a certain point there is some two hundred thousand yards that I am higher than they, and these parties are higher than ours.

Q. Have you those?

A. I have a copy of them on this; a sum total of the work I copied out of their books (showing).

Q. Show that, let us see what that is.

A. There is the proposition right there (indicating); from the headgate to Los Banos there is 746,000 yards, I make it 1,045,000, making nearly three hundred thousand yards difference; then taking the next fifteen miles, which is all I copied, our fifteen comes to 596,000 and theirs is 450,000, leaving a difference of 144,000 that I am ahead of them, even then.

630 Q. How much is that all told?

A. That all told is 400,000 yards, in round numbers.

Q. That your estimate is over the estimate of the company?

A. Yes, the estimate that I copied from their books.

Q. And that figure, at your rate, would be how much?

A. My rate is—well, the average of my rate is six and a half cents.

Mr. MCENERNEY: $26,000.00.

A. $26,000.00.

Q. That is for thirty miles.

A. That is as far as I have copies and as far as I can compare the two.

I don't see why a man would take an end area at four miles apart;

I don't think anybody's eye can go to work and determine whether the ground inundates a foot or three inches or four-tenths of a foot in that distance and show any difference of two feet or three and three-fourths feet by the quantity and the length. I think a man's eyesight is lost in four miles.

Q. Then you don't think it is possible to get an accurate estimate of the quantity without taking the measurements of the lengths; that is, in the manner in which it was done as testified to by these other engineers.

A. I hardly think they could form the result that is necessary in this by taking cross-sections every four miles, on an average of four miles, there is some fourteen miles. Here is a cut they got of five and a half feet at the end area of a thirty-foot canal, and ours
631 is 3.8 feet, barring all mistakes; we are all human, but we expect we have carried it out right.

Q. What does that result in?

A. Well, it results in—its results are a foot—a yard and three-fourths to the running foot that they have got more than we have. I have been trying to see wherein the discrepancy could come in.

Q. Is that all you desire to say on the explanation?

A. That is all, if they understand it thoroughly.

Mr. STONESIFER: Now we will offer in evidence, in connection with what Mr. Goodwin has said, all his notes and papers here connected with it.

Mr. MCENERNEY: I wish you would have then all marked.

(Goodwin's figures and estimates were thereupon introduced in evidence and marked respectively "Exhibits I, J, K and L.")

Mr. STONESIFER:

Q. Now with respect to the wood-work, Mr. Goodwin, your report here shows, doesn't it, and isn't it a fact that you have taken every structure alone to itself and estimated the amount of lumber contained in it and the cost and value of that lumber and the necessary labor to construct it?

A. Yes sir.

Q. You have figured each one out separately, have you?

A. As we went down.

Q. As you went down?

A. Yes sir.

Q. And this contains the separate estimates commencing with the dam, headgates, falling dam, inlet gates, double inlet gates, single gates, bridges, distributing gates, regulating gates and dis-
632 tributing gates, and these are the estimates that you have made of each particular structure (indicating)?

A. Yes sir.

Q. And the amount of lumber that is in it is in these other reports (indicating).

A. The amount of lumber—well, here is the lumber, it is all in here (indicating), here is the pieces (showing). I didn't duplicate,

but just as I came to an inlet gate, if it was the same size as the other, I just put it down.

Q. And you took each stick of timber to itself?

A. Yes sir.

Q. And figured out its contents, didn't you?

A. Yes sir. Here is a book here (indicating), it is a sort of a blotter, and from there it is carried into the other.

Q. From there it is carried into the other, giving the place, size and dimension, and you have been particular, have you, in making your estimates in this price of lumber to figure the freight in at the different points?

A. Yes sir.

Q. The freight at Los Banos at one figure, as your report shows.

A. Yes sir.

Q. And freight to Newman at another.

A. Yes sir.

Q. And so on all through up and down the canal.

A. Yes sir; that will give it right in front here (showing).

Q. Yes sir. In other words, you have not omitted a single detail, have you?

A. I don't think I have.

Q. (continued). —in forming your estimate.

A. I came across something that wasn't copied in here, a matter of two thousand dollars, that has not been copied into this one,
633 and of course that would have to go into the sum total.

Q. State what that is.

A. That is the driving of the sheet piling in the dam and the headgate. The lumber was put in, but it wasn't copied into here (indicating). It shows on the original sheet here where we had so many feet of sheet piling or had so many number of sheet piling, the amount of the lumber is in there, and no price of driving was put in. That, of course, wants to be added on that one (indicating). This I believe is in evidence so I didn't change it—this sheet I believe is in evidence (indicating).

Mr. McENERNEY: I have no objection to your correcting it.

Mr. FULKERTH: No objection to him putting in that memorandum?

Mr. McENERNEY: No. Does that change your sum total?

A. Only two thousand dollars more, a small amount.

Mr. STONESIFER: I desire it to go in just as it is, desire nothing omitted.

Mr. McENERNEY: I have no doubt about that, Mr. Stonesifer.

(Witness corrects statement by adding to estimate two thousand dollars for driving sheet piling.)

Mr. STONESIFER: There is another question I would like to ask Mr. Goodwin:

Q. Of course, this wood-work that was in the ground and below the water, you could not see in order to estimate it?

A. No sir.

Q. In order to have that—in order to find out what that was what did you do?

A. I went to San Francisco and got the original plans of
634 the headgates, etc., and simply copied the inlets and outlets.

Q. From the company?

A. From the company.

Q. They furnished that?

A. Yes sir.

Q. You went to get that information?

A. Yes sir.

Q. And from them you learned, did you, what was below the ground—what wood-work was below the ground and what was in the water that you could not see?

A. Yes sir.

Q. What was out of the water and what you could actually see, you actually measured?

A. Each stick by itself.

Q. Each stick of timber to itself?

A. Yes sir.

Q. Oh, did you—there is a place up there several miles where the canal runs through a creek, is there, or swail?

A. Yes sir, I believe there is about two miles of it.

Q. Did you see any evidence there of any work having been done on that two miles?

A. No sir. I probably had better give you the exact measurement.

Q. Very well.

A. 93,000 feet.

Mr. FULKERTH: Not quite two miles.

A. Yes sir.

Mr. STONESIFER: I believe that is all.

Cross-examination.

Mr. MCENERNEY:

Q. Mr. Goodwin, you have stated that you have allowed the company about four hundred thousand yards of excavation which they did not claim in their books. How do you account for that?

635 A. I will have to make a little explanation: of course, this was a rough measurement, and we can't get the same ground that existed when they went by, they took them at every hundred feet, and we took them at a thousand and two thousand, as the case may be, and a very small fraction, a half a foot, you know makes a great deal of difference in seventy miles. I am over theirs, but I take my own survey as I make it.

Q. Well, don't you account for that difference, at least in part, to extra excavation made by the company since?

A. Yes, I have made that remark that there was some.

Q. Yes, you don't know, do you, that the fact is that they made an additional excavation of 165,000 square yards in 1890, in one piece of work?

A. Yes, but you must remember that I am taking the finished portion of that work, I am taking the canal as they extended and widened it out; I have changed the cross-sections of the old work to the present work.

Q. Don't that account for 165,000 of your 400,000 yards?

A. No sir, not a particle of it.

Q. Well——

A. Because, in the first place, the work was at the outset a thirty-foot canal, and if they widened it out to a forty or fifty foot, it remains there, and I have it in there as a fifty-foot, because I take it as it stands.

Q. Then the difference between your estimates—between your calculations and the calculations of the company amount to a great deal more than four hundred thousand?

A. Yes sir.

636 Q. Will you give us the figures now of the difference as it actually is?

A. Do you want me to read them all out to you?

Q. Yes, give it to me in round numbers.

A. From the headgate to Los Banos, that is thirty-seven miles.

Q. Have you it in a sum total?

A. Yes sir, I have a sum total, that would be 438,400.

Q. 438,500?

A. 400.

Q. 438,400, that is the difference between yours and the company's books?

A. What I have copied off the company's.

Q. Have you copied off the company's books a memorandum of any excavation after the original construction?

A. No, I say that wants to come out of that, of course; any work they have done really wants to come out of that difference.

Q. That 438,000.

A. Yes sir.

Q. So if that was 638,400 you would be 200,000 short?

A. Yes sir.

Q. If it was 438,400, you would be just even with them?

A. Yes sir.

Q. So the question still remains open as to how much they did from the time of the original construction down to the time you did the work there?

A. Yes. This, of course, don't take in the whole line of the canal, just a certain portion of the work.

Q. Yes sir. Now, have you included the Dos Palos canal in your estimate?

A. I have not.

637 Q. And the Poso?

A. I have not the Poso canal.

Q. Those are extra and outside?

A. I don't know anything about that.

Q. They should be added to the estimate?

A. They should be added to the estimate.
Q. Yes.
A. I know nothing about that.
Q. Now, you have a drawing of the property of the headgate up there; you didn't get any drawing for the wings, did you?
A. The wings show for themselves.
Q. Did you get any drawing for them?
A. I got nothing but the headgate.
Q. The headgate. You don't know whether the headgates as now built are according to those plans, are they?
A. It looks like they were.
Q. You could not see under the ground?
A. No sir, certainly I could not; I got it from information also.
Q. Well, we are just talking about whether you got it from the plans or not. That is only your deduction from some other information you have, isn't it?
A. The plans influenced me.

Mr. McENERNEY: All right, that is all.
Mr. STONESIFER: That is all.

Mr. McENERNEY:

Q. How many cross-sections did you testify to yesterday altogether?
A. I think there was 18 or 19 real cross-sections.
Q. On the 70 miles of canal?
A. Probably took more than that, probably took forty.
638 Q. I know, but you are not reporting more than 18, are you?
A. Merely report eighteen complete cross-sections.
Q. Well, how many half cross-sections did you make?
A. I suppose the sheet shows for itself, maybe twenty.
Q. Made them at the bridges, didn't you, the cross-sections?
A. I did, sir.
Q. And not between the bridges?
A. No sir, I had no way to get across.
Q. So you don't know how many cross-sections that you made except that you do know you made the eighteen full cross-sections which are reported here.
A. Yes sir, that is all; but, of course, in making the cross-sections, I had to adopt this mode because I had no way to get across; but as far as the cross-sections are concerned in my business, I don't care for it in my estimates; my estimate is on a thirty-foot canal having a two and a half to one slope, what the cost may be on the first 30 or 37 miles, and if it measures 30 feet from bank to bank, I assume it is on that basis.

Mr. McENERNEY: All right.
Mr. STONESIFER: We will offer in evidence the certified copy of the assessment-roll for Fresno and Merced counties.
Mr. GRIFFIN: Your assessment or the company's?
Mr. STONESIFER: The company's.

(Certified copies of assessment-roll of Fresno and Merced counties introduced in evidence and marked "Exhibits 1 and 2.")

Mr. STONESIFER: In connection with the assessor's testi-
639 mony, I suppose it will be considered that the assessment-roll of this county be read in evidence.

Mr. MCENERNEY: Well, specify whatever you want in the morning.

Mr. STONESIFER: Well, whatever the assessment-roll shows.

Mr. MCENERNEY: Well, all right, there will be no objection.

* * * * * * *

Mr. MCENERNEY: I would like to ask Mr. Goodwin a question:

Q. Mr. Goodwin, how many miles of canals of this company are there?

A. Canal proper?

Q. Well, canal proper, first, then what lateral canals.

A. I don't know anything about the laterals.

Q. How many in the main canal?

A. The real measurement or full measurement of the canal counting the sloughs—there are two sloughs used as canals—is 95.8 miles.

Q. 95 miles.

A. 95 miles and eight-tenths.

Q. Do you know how large the Dos Palos canal is, is that included in that 95 miles?

A. I have nothing of the laterals at all.

Q. Now, what does that consist of, tell it to us briefly.

A. The main canal?

Q. And the two sloughs.

A. Well, the two sloughs form a portion of the main canal, so I call it a portion of the main canal, although there is no work
640 done on them.

Mr. MCENERNEY: Yes, that is all.

Mr. STONESIFER: I believe that is about all.

CHAIRMAN: Gentlemen, do you propose to argue this matter tomorrow?

Mr. MCENERNEY: Just as the board desires.

CHAIRMAN: What do you propose to do if you don't argue it then?

Mr. FULKERTH: Why, I suppose we had better dispose of it now while we are here.

CHAIRMAN: I think so. All I want to know is, whether you propose to argue it or submit it on the evidence already taken.

Mr. STONESIFER: What do you desire, Mr. McEnerney?

Mr. MCENERNEY: I would like to address the board for fifteen minutes. I am willing to be limited. I don't want to make any speech that would give the doctor here paralysis, or anything of that kind.

Dr. OSLER: I am getting pretty nervous; I don't want it to go too far.

CHAIRMAN: What time shall we meet in the morning, gentlemen?

Mr. McENERNEY: Suppose we take a half an hour apiece; that is all I want to argue the matter.

Mr. STONESIFER: Very well.

CHAIRMAN: That is satisfactory, I think. Does nine o'clock suit the board for adjournment?

Mr. OSLER: Suits me.

Mr. CARMICHAEL: It suits me.

Mr. BARNES: It suits me.

CHAIRMAN: We will take an adjournment until nine o'clock tomorrow morning, gentlemen.

641 JUNE 26TH, 1896—9 a. m.

Board convened; full board present.

Mr. STONESIFER: There is a question I would like to ask Mr. Sherman this morning, with the permission of the board. I neglected to do it last night. It won't take but a minute.

CHAIRMAN: Is he present?

Mr. STONESIFER: He was here a moment ago.

Mr. McENERNEY: Well, I want to ask Mr. Goodwin a question, and perhaps by that time Mr. Sherman will have returned.

R. H. GOODWIN, recalled.

Mr. McENERNEY:

Q. Mr. Goodwin, in making your calculations as to the value of this property, I understand that you have limited yourself to what it would cost to duplicate this system. Is not that true?

A. Yes sir.

Q. And by "the system," you mean the main canal and headworks?

A. Yes sir.

Q. You haven't made any calculations as to the value of the water right to the company, have you?

A. Well, I haven't placed any in, no sir.

Q. Now, how much water does that company withdraw at that point, do you know?

A. I took no measurements whatever as to that?

Q. You have some idea; about 3000 inches, idn't it?

A. Well, I should judge about; yes, somewhere in the neighborhood of 3000 inches.

Mr. McENERNEY: Yes sir. That is all.

642 Cross-examination.

Mr. STONESIFER:

Q. You say the water right is not included in your estimate?

A. No sir, not as figures.

Q. Well, what estimate do you put on the water right?

Mr. McENERNEY: Are you an expert on the value of water rights?

A. No, sir.

Mr. STONESIFER: Know of any water rights having been sold recently in the last few years?

A. I have in the last six years.

Q. Where?

A. In the Modesto irrigation district.

Q. What right of way—what water right was that?

A. Commonly called, I believe, the "Wheaton right"—"Wheaton dam site and water right."

Q. And water right. How is that water right compared with this water right?

A. About the same.

Q. About the same. About the same amount?

A. Same amount.

Q. And do you know what that sold for?

A. I believe——

Q. To the Modesto district?

A. I believe it was something like $22,500 for the dam site, water right and the land adjoining, if I am not mistaken.

Mr. FULKERTH: That included the dam also across the river there?

A. The dam site and dam.

Q. There was a dam across the river, across the Tuolumne
643 river. What was that dam worth?

A. I don't think it could be put in there for less than $30,000.

Q. A good dam, was it?

A. It was a very good dam.

Q. You say there was some land went in with it? How much land?

A. I can't remember to state.

Q. You don't know how much?

A. No. I think it was a quarter section.

Mr. McENERNEY: Where was this?

A. That was at the headworks of the Modesto and Turlock district.

Q. How far is that from the headworks of the San Joaquin and Kings River canal?

A. How far is it from that?

Q. Yes sir.

A. Oh, I don't know.

Q. A hundred miles?

A. I guess it is.

Q. Over?

A. About a round hundred miles.

Q. Where would you divert 3000 inches, if you were to duplicate this system, upon the San Joaquin and Kings river-, the source of this company's supply?

A. How is that?

Q. Where would you divert three thousand inches to appropriate, where would you get it to appropriate it in the neighborhood of the supply of this company?

A. I haven't examined around in that district at all?

Q. You haven't any particular source in mind now.

A. No sir.

644 Q. Don't know of any at present?

A. No sir.

Mr. McENERNEY: That is all.

Mr. STONESIFER:

Q. In this sale that you know of in this county, what was the principal feature in that purchase, the principal element that entered into the amount of the purchase?

A. It was the dam site.

Q. The dam site?

A. Yes sir.

Q. Is there any particular value to the dam site that this company has?

A. I don't think so.

Q. There are other places just as convenient?

A. Just as convenient.

Q. Just as adapted?

A. Yes sir, as near as I could see. I didn't examine very thoroughly for that purpose.

Q. Do you know whether the San Joaquin is a navigable stream or not?

A. Well, I heard say so, up as far as White's bridge, I never seen it.

Q. That is above the point of diversion, is it?

A. Yes sir.

Mr. FULKERTH:

Q. Do you know the number of acres covered in the system of the Turlock and Modesto irrigation district?

A. Well, no, not accurately.

Q. I mean in round numbers.

A. I think there is 173,000 in Turlock, originally was, and I am in doubt about Modesto, but I think there is 80,000 now.

Mr. McENERNEY: How many are now under irrigation now in those two districts?

645 Mr. FULKERTH: How many? There is none.

Mr. McENERNEY: I beg your pardon. I thought there was.

Mr. FULKERTH: We are waiting for a decision of the supreme court in the matter.

Mr. McENERNEY: Mr. Goodwin, how many acres are now under irrigation?

A. I don't believe there is any.

Q. You know there is not, don't you?

Mr. FULKERTH: The system has not been completed yet. Is not that true?

A. Yes. There may be irrigation up there for all I know, around the dam. They are not irrigating for any crops.

Mr. McENERNEY: Yes. You think they may be irrigating the dam?

A. I think so.

Q. How much did the system cost, do you know?

A. As far as it has gone?

Q. Yes.

A. The Turlock system——

Mr. STONESIFER: I don't see that that cuts any figure, what the Turlock system cost.

Mr. McENERNEY: Mr. Fulkerth thought it did, and I only followed it up.

Mr. STONESIFER: He only asked the number of acres.

Mr. McENERNEY: Of what purpose is that?

Mr. STONESIFER: There was no purpose; it is the water rate we are inquiring into. Can't compare these systems with ours, anyway.

Q. Oh, this water right was procured for a nominal sum, wasn't it, Mr. Goodwin?

Mr. McENERNEY: Do you know anything about it, Mr. Goodwin?

A. Which one?

646 Mr. McENERNEY: The San Joaquin, you are talking about, aren't you, Mr. Stonesifer?

Mr. STONESIFER: No, I am talking about the one the Modesto district acquired.

Mr. McENERNEY: Oh.

A. Yes sir, it was a very nominal sum.

Mr. McENERNEY: You said the dam was worth 40,000, or cost that.

A. No, I didn't, for I could place it in there for $30,000.

Q. What philanthropic gentleman put it there and sold it for $22,500?

A. Mr. Wheaton, I believe.

Mr. McENERNEY: He is a sort of a Stanislaus Gogswell then——

A. What say?

Mr. McENERNEY: —who goes about doing good works.

Mr. STONESIFER:

Q. Do you know of any other sales, Mr. Goodwin, recently? Know of any in Tulare?

A. I know of one in 1890, I think it was.

Q. In Tulare county?

A. Yes sir.

Q. Know what that ditch and water right sold for in Tulare

county, the People's ditch? I believe it is called the "People's ditch."

A. "Settlers' ditch."

Q. Settlers' ditch. Know what that sold for?

A. Reputed to be sold for $22,000.00. I was down there and just merely heard it. I didn't see the sale nor didn't see the money turned over.

Q. You were there at the time the sale occurred?

A. Yes sir.

Mr. McENERNEY: Who told you the amount? The man
647 who struck "Billy Patterson"?

Mr. FULKERTH: There was considerable talk about that, wasn't there?

A. Yes sir.

Mr. FULKERTH: It was claimed there was some job of some kind.

A. Yes sir.

Mr. STONESIFER: That included their ditch and everything.

A. Included their ditch and everything about the works and construction.

Mr. STONESIFER:

Q. Then, in your judgment, a water right is not of—the value of it, if it is in a navigable stream, would be of a nominal value, would it?

A. Yes sir.

Mr. McENERNEY:

Q. Really has no value at all, has it?

A. I don't see where it was in this case.

Mr. STONESIFER: No; I mean a water right generally has no value whatever?

A. No, I don't think so.

Mr. McENERNEY:

Q. It is not worth having.

A. Well, you can get the same opportunity and I can or anybody else. It is worth having. If it runs dry or nearly dry, then, of course, it is not.

Q. If you have the only water right in the district, that is not of any value, in your view?

A. Not in a navigable stream.

Q. Are you a water-right engineer?

A. I am not, sir.

648 Q. You don't know anything about it: that is just your — That is all, Mr. Goodwin.

Mr. STONESIFER: That is all, Mr. Goodwin. Call Mr. Sherman.

(By consent of counsel, an adjournment was here taken subject to notice.)

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MONDAY, *June* 26, 1899.

Counsel appearing: For the complainant, W. B. Treadwell, Esq. For the respondents, C. A. Stonesifer, Esq., and L. W. Fulkerth, Esq.

PETER HANSEN, called for the respondents, sworn.

Mr. STONESIFER:

Q. 1. Where do you reside, Mr. Hansen?
A. In Merced county, near Newman.
Q. 2. How long have you resided there?
A. For the last ten years.
Q. 3. Do you know where the canal of the San Joaquin & Kings River Canal & Irrigation Company is?
A. I do.
Q. 4. Do you live below that canal?
A. I do.
Q. 5. Were you ever in the employ of that company?
A. I was.
Q. 6. When?
A. I commenced in the year 1889, and worked up until 1897.
Q. 7. From 1889 up until 1897?
A. Yes sir.
Q. 8. In what capacity were you employed by them?
A. As a sectionman on the canal.
Q. 9. As a sectionman on their canal, what were your duties?

A. To discharge the water from the canal to consumers,
650 and look after what they were irrigating—the amount of acres they irrigated.

Q. 10. To distribute the water amongst the consumers, and look out for the amount of acres irrigated?
A. Yes, sir.
Q. 11. To generally look after that portion of the canal over which you had charge?
A. Yes, sir.
Q. 12. What portion was that over which you had charge?
A. It is called the Cottonwood section.
Q. 13. Between what points did that extend?
A. It runs from Newman to Ingomar, between those two stations.
Q. 14. About how far?
A. Somewhere near ten miles. About a ten-mile section.
Q. 15. It was a part of your duty, was it not, to receive applications for water?
A. Yes sir.
Q. 16. Under the rules of the company?
A. Yes sir.
Q. 17. And when you had water, to distribute it?
A. Yes sir.
Q. 18. In accordance with the applications?
A. Yes sir.
Q. 19. Was that rule observed generally by the water-consumers?
A. It was, by all except Miller & Lux.

Q. 20. You say except Miller & Lux?

A. Yes, sir.

Q. 21. Do you mean that they would go and take water when they wanted it?

Mr. TREADWELL: Do not lead the witness in that way.

A. Their rules were—I will explain that we had schedules for the consumers to sign whenever they came to apply for water. And Miller & Lux—I stopped right on their ranch, where the
651 foreman is on the ranch, and they also had a telephone from the adjoining ranch that they had there, and whenever there was water, why, they would just ask for it, either verbally or by telephone.

Q. 22. They did not make any written application for it at all?

A. No sir, they never signed any written application.

Q. 23. When it came to the distribution of the water, how was it? What was the difference between Miller & Lux and the other consumers of the company in that respect?

A. Well, that was the difference, that, of course, they generally had it whenever they got ready for it; they would take the water whenever they got ready for it, excepting in scarcity of water they sometimes had to give way to the people, too.

Q. 24. But usually they would go up there and take the water, would they?

A. As usual, when the water was plentiful, they took the water whenever they were ready for it.

Q. 25. Without making any written application?

A. Without making any written application.

Q. 26. You say that you resided on the ranch there with Miller & Lux's foreman?

A. With Miller & Lux's foreman, yes sir.

Q. 27. And if he would want the water, he would — up and open the gate, would he?

A. Well, he would, of course, in the morning tell me, "Today I am going to start irrigating such a field," and if water was there, he would have it.

652 Q. 28. Would he go up with his men and turn it on?

A. Yes sir.

Q. 29. When it came to the number of acres, you would report to the superintendent the number of acres irrigated?

A. Yes sir. At the end of the year I would send in a yearly report of the lands irrigated during the year.

Q. 30. From whom would you get the acreage reported to the superintendent as irrigated on the part of Miller & Lux?

A. The whole section was at one time surveyed; every field was surveyed separately—all but Miller & Lux.

Q. 31. Miller & Lux's fields were not surveyed off?

A. No sir.

Q. 32. How would you get at the acreage?

A. Oh, guess at it.

Q. 33. You would guess at it?

A. Yes sir.

Q. 34. The fields of the other water-consumers were all surveyed off, were they?

A. Yes sir.

Q. 35. Accurately?

A. Yes sir.

Q. 36. You knew just exactly how much they were?

A. I had a map of the whole section. I would just look at the map, and I would find the amount in each field.

Q. 37. Would not the foreman of Miller & Lux tell you how much he had irrigated, and you would take that and report it in to the superintendent?

Mr. TREADWELL: We object to that as leading. I hope you won't lead the witness in that way, Mr. Stonesifer.

A. At the ranch where I resided, they had two sections of land. A small portion of it was opposite the canal, which was not
653 irrigated. You could come very close to guessing at that, the amount of acres in that ranch. The adjoining ranch to that was kind of cut up, so that we could not tell there the amount of acres so closely. From there I generally got the number of acres from the foreman, as he was better acquainted than I was with the amount that was being irrigated.

Mr. STONESIFER:

Q. 38. That adjoining field that you speak of there was the McPike field, was it not—commonly called the McPike ranch up there?

A. Called the McPike ranch, yes sir.

Q. 39. That is a large ranch of several thousand acres?

A. Yes sir, but not irrigated land.

Q. 40. Not cultivated land?

A. Not cultivated land—not irrigated.

Q. 41. There is considerable of it cultivated, though?

A. Yes sir. There is irrigated a thousand acres, somewhere near—more or less—every year.

Q. 42. That custom of Miller & Lux prevailed, as far as you know, all up and down the canal, did it not?

A. I could not answer, only just on my section. That is all I know about.

Cross-examination.

Mr. TREADWELL:

X Q. 1. What was the name of the foreman of Miller & Lux's ranch that you lived with?

A. There were different foremen on the ranch while I was there.

X Q. 2. Name all the foremen that were there while you were living there.

A. The first one was a man named John Lorenson.

654 X Q. 3. Who was the next one?

A. The next one was George Johnson.
X Q. 4. And the next?
A. Charlie Johnson. And then there was John Grant.
X Q. 5. That is all, is it?
A. Yes sir.
X Q. 6. What did they call that ranch?
A. That was called the Grove farm.
X Q. 7. When you reported the number of acres that Miller & Lux had irrigated in the year, you made as careful an estimate as you could, did you not?
A. Yes sir.
X Q. 8. You got all the information you could on the subject?
A. Yes sir.
X Q. 9. And you made a fair estimate, did you not?
A. Yes sir.
X Q. 10. And you did not give them any advantage or report any less number of acres than they irrigated, did you?
A. No sir, none whatever.
X Q. 11. They never irrigated at any time but when you knew it, did they, on this section?
A. Well, no, not exactly. It happened.
X Q. 12. It did happen sometimes that you did not?
A. Yes sir.
X Q. 13. How did that happen?
A. That they took it.
X Q. 14. Without your knowing it?
A. Without my knowing it.
X Q. 15. How do you know that they took the water without your knowing it?
655 A. I would investigate it, and find out when I came along on my beat.
X Q. 16. They had no right to do that, had they?
A. No sir, I presume not.
X Q. 17. Your instructions were to look out for all the water delivered to Miller & Lux as well as to anybody else, were you not?
A. Yes sir.
X Q. 18. And you did your best to do that?
A. Yes sir.
X Q. 19. If they took any water without your knowing it, they did so improperly?
A. Yes sir.

656 EMIL S. WANGENHEIM, called for the respondents, sworn.

Mr. STONESIFER:

Q. 1. Mr. Wangenheim, where do you reside?
A. At Newman.
Q. 2. How long have you resided there?
A. I have resided at Newman ever since the town started.
Q. 3. When was that?

A. That was in 1888. Before that I lived at Hill's Ferry, which was three miles from there,—off and on since 1873.

Q. 4. You are a stockholder in the corporation Simon Newman Company, are you not?

A. Yes sir.

Q. 5. Do you know where the canal of the San Joaquin & Kings River Canal & Irrigation Company is?

A. Yes sir, I do.

Q. 6. Does the corporation, the Simon Newman Company, own any land below that canal?

A. Yes sir.

Q. 7. Where at?

A. In Merced and Stanislaus counties.

Q. 8. Does it own any land on the San Luis creek?

A. It does.

Q. 9. Any land that can be irrigated from the surplus waters of the canal?

A. Yes sir.

Q. 10. Did your company ever prepare its land there to receive any surplus water from the canal?

A. We did.

Q. 11. When?

A. Three or four years ago.

Q. 12. Where at?

A. It is about two miles or three miles below the canal, in
657 the bed of the San Luis creek.

Q. 13. That is in the San Luis section of the canal, is it?

A. I could not tell what section it is in. It is in the section above this Cottonwood section. I think it is in the San Luis section.

Q. 14. How much land has the Simon Newman Company there?

A. I think in that piece there is someting over 3,000 acres.

Q. 15. It was wild, uncultivated land, was it?

A. Yes sir.

Q. 16. Did the company waste its waters down San Luis creek down over this land?

A. For quite a while.

Q. 17. Did you prepare the land in order to spread out this water, this waste water?

A. Yes sir.

Q. 18. What happened after you did that?

A. They never turned any more down.

Q. 19. Why was that?

Mr. TREADWELL: We object to that as irrelevant and immaterial. I do not know what you mean by the question.

Mr. STONESIFER: You will find out.

Mr. TREADWELL: The question is unintelligible as it stands. If the question means, why did the company refuse to do it, then it is a conclusion which the witness cannot draw. He can state the facts, but he cannot draw the conclusion.

Mr. STONESIFER:

Q. 20. Why did the company stop turning the water down that San Luis creek?

Mr. TREADWELL: The same objection. That is a conclusion, and the witness should state facts and nothing else. Anything
658 that was said or done, he can state.

A. I don't know. I can imagine the reason.

Mr. STONESIFER:

Q. 21. Give us the reason, as far as you know.

Mr. TREADWELL: We object to any imagination of the witness. The witness can testify only as to facts which he knows.

A. It would be a benefit to us if the water had been turned on there.

Mr. STONESIFER:

Q. 22. And by stopping it?
A. By stopping it we got no benefits from it.
Q. 23. It went somewhere else, did it?
A. It went somewhere else.
Q. 24. On the land of Miller & Lux?
A. On Miller & Lux's land.
Q. 25. Did they have land just below yours?
A. They did.
Q. 26. So that the water as it passed through your land would — through on to the Miller & Lux land, would it?
A. Yes sir.
Q. 27. What did you do in order to stop that, so as to keep it up on your land?
A. We built a dam or a levee.
Q. 28. And other checks there?
A. No sir. We just built a levee to throw the water off and scatter it over the lands.
Q. 29. When you did that, you say the waste water stopped coming that way?
659 A. It stopped coming that way, yes sir.
Q. 30. Was that one of the wasteways of that canal?
A. Yes sir, it was.
Q. 31. So you got no more benefit from that?
A. No sir.
Q. 32. It went to other places?
A. It went somewhere else.
Q. 33. Ever since you prepared your land to retain those waste waters, has any more ever been turned down that wasteway?
A. I think they turned some down once, when they had some arrangement by which we were to pay for it.
Q. 34. By which you were to pay for it, you say?
A. Yes sir.
Q. 35. And that is the only way you could get it?

A. That is the only way we could get it.

Q. 36. And you did pay for it?

A. I suppose so. I could not say as to that. I was not there then.

Q. 37. That is one of the rules of the company, is it not, Mr. Newman, that people who use waste water up there must pay for it? That is their practice, is it not? I mean, they put that into practice.

A. That is put into practice. Whatever water is used, must be paid for.

Q. 38. Whether it is waste or anything else?

A. Whether it is waste or anything else.

Q. 39. The rule is, that the customers of the company who used that waste water must pay for it—the consumers there?

660 A. Yes sir, that is the rule.

Q 40. And they do pay for it, do they not?

A. As far as I know, they do.

Q. 41. Do you know whether or not they have turned their water down on the Miller & Lux land, wild land, when customers below could not get water to irrigate their alfalfa and crops with?

A. I do not know what you mean by "customers below."

Q. 42. I mean water consumers.

A. I do.

Q. 43. Just state as to that.

A. I know that water has been turned down the waste creeks when people have asked for that same water, and could have irrigated with it, but were refused water.

Q. 44. That is, people down in Stanislaus county?

A. No sir, just those in Merced county; not in Stanislaus county.

Q. 45. When it was turned down those wasteways, where would it go to?

A. It runs on the lands of Miller & Lux.

Q. 46. Spreads out over their lands?

A. It spreads out over their lands, yes sir.

Q. 47. What lands, their uncultivated lands?

A. It was uncultivated originally, but they have brought a great deal into cultivation through this waste water.

Q. 48. You mean by "cultivation," that they have prepared it for scattering out this waste water, if it is waste water?

A. Yes sir.

Q. 49. You do not know that it is waste water, though, do you?

661 A. I know that it is waste water when it gets into those wasteways; it is called such.

Q. 50. It is called such, is it?

A. It is called such, yes sir.

Q. 51. All you know is, that it comes from the canal?

A. Yes sir.

Q. 52. As to whether or not it is waste water, you do not know?

A. I know that sometimes it is not waste water, because we have wanted the water and could not get it, when it has been going down the ditch and right by our ranches, too.

Q. 53. Therefore it would not be waste water, because waste water is water that nobody could use, is it not?

A. That is what I would call it.

Q. 54. Under the circumstances of which you have spoken, the water was required by the customers or consumers of the company further down the canal?

A. It was required by us further up the canal, not down the canal.

Q. 55. Mr. Wangenheim, you are familiar with this irrigated country that lies below the canal, are you not?

A. I am.

Q. 56. Your company does a great deal of business there with these people, does it not?

A. Yes sir.

Q. 57. And you know their circumstances pretty well?

A. Yes sir.

Q. 58. You know whether or not they are prospering with this water, do you not?

A. Yes sir.

662 Q. 59. What is the business of your company there?

A. A little of everything.

Q. 60. Just in a general way, state the business.

A. It is general merchandise, banking, warehouses—taking care of the business for the farmers in general.

Q. 61. That gives you an opportunity, does it not, to know whether or not a rate of $2.50 per acre is a fair rate to those people?

A. I do not know what you mean by "a fair rate" to them.

Q. 62. I mean a rate under which they can prosper.

A. I am familiar to judge that.

Q. 63. Just state whether or not, considering all the conditions that exist up there, a rate of $2.50 per acre is a fair rate to those people.

Mr. TREADWELL: We object to the question upon the ground that it is a conclusion, and is the conclusion in issue which the court must draw, and not of which any witness can state an opinion. Therefore it is not competent.

A. In ordinary seasons, the rate is entirely too high for the people to make any progress.

Mr. STONESIFER:

Q. 64. It is more than they can pay, is it, and profitably carry on their business?

A. Yes sir.

Q. 65. In ordinary seasons?

A. In ordinary seasons.

Q. 66. That is, you mean by that, to take the average run of seasons?

A. Take the average run, yes sir, Of course if we have an excessive drought, that makes a difference.

Q. 67. You are speaking now of the average?

663 A. Of the average, yes sir.

Q. 68. Say ten years as an average; a rate of $2.50 per acre is a rate they cannot pay and profitably carry on their business?

Mr. TREADWELL: The same objection, that it calls for a conclusion and is not stating any facts.

A. Yes sir, that is what I meant to say.

Mr. STONESIFER:

Q. 69. Since the rate has been fixed at $1.50 by the board of supervisors of Stanislaus county, Mr. Wangenheim, do you know whether there has been more land put in irrigation than there was before?

A. Yes sir, there has, quite a good deal.

Q. 70. Quite a good deal more?

A. Yes sir.

Q. 71. In other words, the people are using the water more now than they did before, since that rate has been fixed?

A. There has a great deal of the country gone into alfalfa since that rate was fixed that was grain before, and while they may have paid a water bill semi-occasionally, they pay the water bill now every year.

Q. 72. Was it not the rule amongst a great many of those water-consumers up there, Mr. Wangenheim, who had alfalfa when the $2.50 rate was in force, to only irrigate their lands every other year?

A. Some did. We did that thing once in a while—skipped a year.

Q. 73. Was it not on account of the water bill that they skipped a year, because they could not afford to irrigate it.

664 Mr. TREADWELL: We object to that as a conclusion and not a statement of facts.

A. We tried it, and we found that we could not stand the $2.50 a year rate, and it paid us better to skip a year occasionally and save that $2.50, in order to make it pay.

Mr. STONESIFER:

Q. 74. That was the case with others?

A. That was the case with others, yes.

Q. 75. Many others?

A. I could not say how many others, but there were some others who did the same.

Cross-examination.

Mr. TREADWELL:

X Q. 1. You have said that for a number of years the company used to waste water down San Luis creek across this 3000 acres of land of yours?

A. Yes sir.

X Q. 2. Did you make any use of that water?

A. No sir.
X Q. 3. Did not try to?
A. We were not fixed for it.
X Q. 4. If you had used it, you would have expected to pay for it, would you?
A. No sir.
X Q. 5. You expected to get it for nothing?
A. If we had used it, we would simply have taken it as coming down the San Luis creek.
X Q. 6. Then you did not expect to pay for it?
A. No sir; not if we could have helped ourselves in any way.
X Q. 7. You have spoken of water being turned onto the land of Miller & Lux when other consumers wanted it. When and where was that?

665 A. It was water that was wasted down the Garzas waste ditch.

X Q. 8. When?
A. It was this year of our Lord.
X Q. 9. What time of the year?
A. Some time this spring; I could not say exactly the month.
X Q. 10. Spring of 1899?
A. Yes sir.
X Q. 11. What land of Miller & Lux did it go on?
A. That I cannot tell you, what they call it. It was lands in township 8, range 9. The section numbers I do not know. It was then immediately east of the Lenora stock ranch, belonging to our company.
X Q. 12. You saw that water going there?
A. I saw the water going down the waste ditch.
X Q. 13. Did you see the water going onto the Miller & Lux land?
A. I did not, but it had to go there unless it went over ours, and it did not go on ours, and it had to go on theirs.
X Q. 14. Then that is merely your conclusion, that it went onto the Miller & Lux land?
A. No sir, it is not my conclusion at all.
X 15. You say you did not see it there?
A. I did not see it there, no sir.
X Q. 16. That is all I want to know. Is that land of Miller & Lux there on which you say that water must have gone, cultivated land?
A. No sir.
X Q. 17. None of it?
A. No sir.
X Q. 18. If Miller & Lux got that water, do you know whether or not they paid for it?
A. I do not.

666 X Q. 19. Did your company make an application for water at that time?

A. We did.
X Q. 20. In writing?

A. I do not know. I suppose so.

X Q. 21. How do you know you made one?

A. Because our superintendent told us that he had applied for it.

X Q. 22. That is the only way you know?

A. That is the only way.

X Q. 23. What was your superintendent's name?

A. His name was Henry Mills.

X Q. 24. So you do not know of your own knowledge that your company applied for water at that time?

A. That is all the knowledge I have, just through our superintendent.

X Q. 25. You are a farmer, Mr. Wangenheim?

A. In a way.

X Q. 26. I mean personally? Have you some knowledge of farming?

A. I have.

X Q. 27. You have taken some part in the farming of your company's lands, have you?

A. I have.

X Q. 28. How many crops of alfalfa can be had from a year off from the average of your company's land where you raise alfalfa, without irrigation? Or, say how many tons of hay can you raise to the acre without irrigation?

A. It depends a great deal upon the nature of the soil.

X Q. 29. I mean on your company's land, averaging it around.

A. It is very hard land to average. Some lands would not
667 raise a crop at all without irrigation, and some would raise three.

X Q. 30. Take the best land you have, the land that needs irrigation the least. How many tons of alfalfa an acre in an average year would you expect to take off, if you did not irrigate?

A. We never cut it for hay when we do not irrigate it.

X Q. 31. You cannot profitably do so, can you?

A. No sir.

X Q. 32. How many tons of hay can you get off that land when you do irrigate it?

A. The land we use that we do not irrigate is of a nature that we very seldom cut hay off of, we always feed it off.

X Q. 33. I am asking you about land you do irrigate. Do you cut hay off the land you do irrigate?

A. Some, yes.

X Q. 34. Where you do cut the hay, how many tons of hay per acre can you get, when you do irrigate?

A. That depends also upon the nature of the land.

X Q. 35. Yes, I understand that, Mr. Wangenheim. But you can give me an average. You say you are a farmer. How much would it average?

A. It is a very hard matter to give you an average.

X Q. 36. You cannot give me one, then?

A. No sir.

X Q. 37. How many head of stock can you feed on irrigated alfalfa, on an average?

A. For how long?

X Q. 38. Per year. How many head of stock can be supported on an acre of alfalfa of your company's land with irriga-

668 tion?

A. One.

X Q. 39. One head per acre?

A. Yes sir.

X Q. 40. With irrigation?

A. Yes sir.

X Q. 41. That is the best you can do?

A. That is not the best; that is the average. That is what we figure, one head per acre.

X Q. 42. What is the average of all the alfalfa land in that country that you say you are quite familiar with? How many head of stock do people generally feed on irrigated alfalfa which they do not cut for hay?

A. Which they do not cut from irrigated land?

X Q. 43. Yes.

A. We consider all through there that an average of one head per acre per year will carry them through in good shape.

X Q. 44. On an average, taking the water consumers in that country who do irrigate alfalfa and who cut it for hay, how many tons do they average per year? What is considered an average yield of a field of alfalfa with irrigation?

A. I could not tell you that.

(A recess was here taken until 2 o'clock p. m.)

669 *Afternoon Session.*

Mr. STONESIFER: There is one matter that I should like to call your attention to, Mr. Treadwell, and that is that during the examination of Mr. Merritt you said you would furnish us with the cost of the stock of this company purchased by Henry Miller from Henshaw Ward as appears from your statement during the taking of Mr. Merritt's testimony. We would like you to furnish us with that, or have Mr. Merritt here with his books to show that transaction.

Mr. TREADWELL: I have no recollection of ever making such a promise. I should like to have my memory refreshed by the testimony. I have no recollection of any such promise at all.

Mr. STONESIFER: It appears in the testimony.

Mr. TREADWELL: I have no recollection on the matter. Refer me to the page where that is, and I will live up to any promise I made. I certainly shall not give it to you unless I did promise it. I have not got it, to begin with. I think you are mistaken.

Mr. FULKERTH: We are not mistaken.

Mr. TREADWELL: I have not got it. All I could do would be to try and obtain it. Mr. Miller can tell.

Mr. FULKERTH: Could you not produce Mr. Miller?

Mr. TREADWELL: I understand Mr. Miller will be here some day this week. I think he is expected here Wednesday.

Mr. FULKERTH: He is not in town now?

Mr. TREADWELL: I presume not. I inquired last week, and
670 they said he would be here Wednesday. He might be here before that.

Mr. FULKERTH: Where could we reach him by subpœna?

Mr. TREADWELL: I could not tell you. You would have to ascertain that in the office. He will undoubtedly be here one day this week.

Mr. STONESIFER: Will you have him here when he comes?

Mr. TREADWELL: I will not make any promise about anything. I will make a point to ascertain this afternoon.

Mr. STONESIFER: We understood that Mr. Miller was here and was going away today. That is the reason we made the request.

Mr. TREADWELL: He may be here today for all I know. He is to be here Wednesday, I am informed.

671 J. T. CROW, called for the respondents, sworn.

Mr. STONESIFER:

Q. 1. State your name, age, residence and occupation.

A. My name is James T. Crow; age, 44; residence, Crow's Landing, California, Stanislaus county. I am a stock-raiser by occupation.

Q. 2. How long have you resided at Crow's Landing, Mr. Crow?

A. About 25 years.

Q. 3. The place where you now reside is situated below the canal of the San Joaquin & Kings River Canal & Irrigation Company, is it not?

A. Yes sir.

Q. 4. You were residing there before this canal was built, were you not?

A. Yes sir.

Q. 5. You say your occupation is stock-raising?

A. Yes sir, principally stock-raising.

Q. 6. What kind of stock?

A. Cattle, mules and horses.

Q. 7. Do you own any land below the canal of the San Joaquin & Kings River Canal & Irrigation Company?

A. Yes sir.

Q. 8. How much?

A. I own 400 acres.

Q. 9. And do you irrigate that from this canal?

A. Yes sir.

Q. 10. How long have you owned that land?

A. About seventeen years, I think.

Q. 11. Then you have been irrigating it, have you, more or less ever since that canal was built?

A. Yes sir.

672 Q. 12. That is, that portion of it?
A. Yes sir.
Q. 13. Where you reside is close to the Orestimba creek, is it not?
A. Yes sir.
Q. 14. Where does the Orestimba creek run from, and into where does it empty?
A. It runs from the Coast Range mountains and empties into the San Joaquin river.
Q. 15. Does this canal cross that creek?
A. Yes sir.
Q. 16. In Stanislaus county?
A. Yes sir.
Q. 17. Is it used as a wasteway for the canal?
A. Yes sir.
Q. 18. When the canal was first built there, Mr. Crow, will you state what your father did towards utilizing that waste water?
A. When the canal was built there, it was emptied into the Orestimba creek, that is as far as it extended at that time. My father put in a dam in the Orestimba creek to catch this waste water for the purpose of irrigation.
Q. 19. Was your father a land-owner below the canal at that time?
A. Yes sir.
Q. 20. Quite an extensive land-owner, was he not?
A. Yes sir, he had considerable land on the ditch, about 1000 acres.
Q. 21. After he had put a dam in the creek to take up this waste water, did the canal company require him to pay for the water?
A. Yes sir; after he put a dam in, he was to pay half price; that is, $1.25 an acre for what land he irrigated.
Q. 22. And he did pay that, did he?
A. Yes sir.
673 Q. 23. What did the company say to him about the use of that water?

Mr. TREADWELL: We object to the question. The question should be as to what any person may have said to him.

Mr. STONESIFER:

Q. 24. What did the officers of that company say to him about the use of that water?
A. My understanding was that the canal company——
Mr. TREADWELL (interrupting): You must testify to what you know of your own knowledge, and not to what any one has told you.
A. I do not know as any one ever told me, only the understanding was——

Mr. TREADWELL: We object to the witness testifying to his understanding; secondly, we object upon the ground that it is not responsive to the question. He is asked what any officer of the

company said to his father. He must testify to what he heard said to him, and nothing else.

The WITNESS: I never heard any of the company say anything to him.

Mr. STONESIFER:

Q. 25. Did you not irrigate some of your land from that dam?

A. No sir.

Q. 26. Did not your brothers?

A. I irrigate some of my land now. It is my land now. It was not then. I fell heir to some property that was watered from that dam. My home place was never irrigated from the waste water. It was my father's property at that time that was irrigated.

Q. 27. You were cognizant of the arrangements, weren't you?

674 A. Yes sir.

Q. 28. Between your father and the canal company?

A. Yes sir.

Q. 29. As to the uses of that water?

A. Yes sir.

Q. 30. How did you know what his arrangement with them was? Don't you know what he paid for the water?

A. Yes sir, I know what he paid. He used to pay $1.25 an acre for the water.

Q. 31. He did do it for some years?

A. Yes sir, quite a number of years.

Q. 32. The officers of the company recognized the arrangement, that is, the officers of the company at that section of the canal?

Mr. TREADWELL: We object to the question. The witness must state facts and not conclusions. He can state what any officer of the company told him and said in his presence, and not any conclusion that he draws on the subject.

A. They recognized it, yes.

Mr. STONESIFER:

Q. 33. You knew what the arrangement was?

A. Yes sir.

Q. 34. Just state what the arrangement was.

Mr. TREADWELL: We object, unless the witness knows of his own knowledge, from any statement made to him by some officer of the company.

A. All I can state is, I was running the ranch at that time in connection with my father. I don't know I ever heard him say particularly what arrangement he made with them.

Mr. STONESIFER:

675 Q. 35. You paid some of the bills yourself, did you not, and knew that he paid some?

A. Yes sir; I knew he paid them. I don't think I ever paid any of the bills at that time.

Q. 36. Just state what that arrangement was.

Mr. TREADWELL: We object, because the statement of the witness shows that it would be hearsay.

A. The canal company seemed to be dissatisfied with the arrangements that were made, and the company agreed to put the dam in themselves and charge us full rates, and keep the dam up, the expenses. They did so, and charged us the $2.50 water rate, the same as any one else paid.

Mr. STONESIFER:

Q. 37. The arrangement I referred to was that made between your father and the company, before the company agreed to maintain the dam, when he paid half rates.

A. That was the arrangement first, that he was to pay half rates, half price. I don't know how long that run. Of course, several years. Then they got dissatisfied and wanted more money, and we just turned the dam over to the company.

Q. 38. They refused to allow that to be used as a wasteway until he did pay that $1.25 per acre?

A. Yes sir, they threatened that they would shut the water off and turned it down Garzas creek, I think it was then.

Q. 39. Garzas creek?

A. Yes sir.

Q. 40. That would then run it onto Miller & Lux's land?

A. Yes sir.

Q. 41. But the company agreed then to turn their waste water down the Orestimba in consideration that your father would
676 pay $1.25 an acre for the water?

Mr. TREADWELL: We object. The witness' statement shows that any answer he makes to this question would be hearsay.

A. Yes sir.

Mr. STONESIFER:

Q. 42. That is for irrigation purposes?

A. Yes sir.

Q. 43. Was he or not to pay for stock water in addition to that?

Mr. TREADWELL: Same objection. The witness states he knows nothing about the contract of his personal knowledge.

A. I don't think he was to pay for any stock water at that time.

Mr. STONESIFER:

Q. 44. Are you familiar with the country that lies below this canal from its terminus up to the head of the dam?

A. Yes sir, I am pretty well acquainted with it.

Q. 45. Have you been over that country very much?

A. I have been over it, I think, three or four times.

Q. 46. Within how many years, do you think?

A. I have been over it twice in the last twelve months.

Q. 47. And previous to that?

A. Previous to that, it was twelve or fourteen years since I was over all of it.

Q. 48. Do you know where Miller & Lux's property lies below this canal?

A. A good deal of it I do.

Q. 49. Do you know the location of their property?

677 A. Yes sir.

Q. 50. Below this canal?

A. Yes sir.

Q. 51. That is subject to irrigation from it?

A. Yes sir.

Q. 52. They are very large consumers of the water of this canal, are they not?

A. Yes sir, they use considerable water.

Q. 53. Do they irrigate any uncultivated land from this canal?

A. Yes sir.

Q. 54. About how much land do they irrigate from this canal that is not cultivated?

A. It would be pretty hard to answer that question in round figures.

Q. 55. As near as you can estimate it, Mr. Crow?

A. As near as I can estimate it, I guess they must irrigate from 60,000 to 75,000 acres.

Q. 56. What was the character of that land before it was irrigated, that uncultivated land of Miller & Lux?

A. It was very poor land, I consider. Most of it was poor land.

Q. 57. Did it produce much grass?

A. No sir; very little.

Q. 58. By irrigating it from this canal, just describe what improvement the water makes on the land, and what grasses it produces.

A. Whenever there was any water went over the land, it makes good feed, lots of grass.

Q. 59. Does it enable them to pasture many cattle?

A. Yes sir, it will make feed for a good many cattle.

678 Q. 60. A good many thousand head of cattle?

A. Yes sir.

Q. 61. In other words, it is a very productive operation for Miller & Lux, is it not?

Mr. TREADWELL: We object. That is a conclusion. The witness can state the facts, and he can state nothing else.

A. I would consider it very productive myself.

Mr. STONESIFER:

Q. 62. It turns their poor and unproductive land into productiveness, does it not?

A. Well, it helps it to a great extent, yes. In course of time it will, I guess, make very good land out of it.

Q. 63. This irrigation of that uncultivated land has been going on for a good many years last past, has it not, Mr. Crow?

A. Yes sir, I think it has.

Q. 64. From your experience as a farmer there, and a water consumer, would you say that a $2.50 per acre water rate was a fair rate to the water consumer?

Mr. TREADWELL: We object to the question upon the ground that that is a conclusion that the court is to draw in this case, and which no witness can draw, as no witness is entitled to state anything more than the facts.

A. No sir.

Mr. STONESIFER:

Q. 65. Can the water consumers there successfully carry on their farming operations under a $2.50 water rate?

Mr. TREADWELL: We object upon the ground that that is a conclusion. The witness can state what the facts are from which the court can draw a conclusion, but the witness is not entitled
679 to draw the conclusion.

A. I don't think so.

Mr. STONESIFER:

Q. 66. In your experience there, what has been the result of a $2.50 rate?

A. What has been the result?

Q. 67. Yes.

A. I can answer for myself. I never have made any money out of it at that rate.

Q. 68. Cannot you answer that others have had the same experience that you have had?

A. That is the general report, what I have heard from them.

Mr. TREADWELL: We object to that, and shall move to strike it out as hearsay.

Mr. STONESIFER:

Q. 69. You know, do you not, about what effect it has on your immediate neighbors?

A. I don't think they can make a paying business out of it, farming or stock-raising, at that rate of taxation for water.

Q. 70. You referred to a rate of $2.50 an acre?

A. Yes, sir.

Q. 71. Do you know, Mr. Crow, whether the company has been discriminating against the consumers in Stanislaus county since this $1.50 rate has been fixed by the board of supervisors?

Mr. TREADWELL: Discriminating in what way?

Mr. STONESIFER: Against them.

Mr. TREADWELL: I say, in what way?

Mr. STONESIFER: That they cannot get water when other people can. That is what I mean.

680 Mr. TREADWELL: The question calls for yes or no, Mr. Crow.

A. I do not know exactly what you mean. Do you mean they favor some?

Mr. STONESIFER:

Q. 72. Yes; those who are in Merced county and above there, in preference to those in Stanislaus county?

Mr. TREADWELL: The question is, do you know?

A. Yes.

Mr. STONESIFER:

Q. 73. Just state what you know about that.

A. Well, the people in Merced county have been getting all the water they want during the shortage. The people in Stanislaus county could not get stock water, even.

Q. 74. Just state what you know about that; what experience you had last year in that matter.

A. Last year we got no water to speak of at all in the latter part of the season. They shut us off with even stock water, and told us to put up windmills and tanks to water our stock with, while the people in Merced county were getting water to irrigate with, and all the stock water they wanted right up to the Stanislaus line.

Q. 75. The company required the consumers in Stanislaus county to pay for that stock water, did they not?

A. Yes sir.

Q. 76. You mean by "stock water," water running down the ditches for the purpose of watering your stock?

A. Yes sir.

Q. 77. In the fields?

681 A. Yes sir, in the fields.

Q. 78. Did you ever go up the canal to ascertain what was the cause of this, Mr. Crow?

A. Yes sir, I went up the canal late last fall; up as far as the dam.

Q. 79. What did you ascertain, Mr. Crow, on your visit up the canal?

A. I found some water all the way along, and still the water was not plentiful.

Q. 80. Did you find whether any irrigation was going on on the east side of the San Joaquin, in what is called the Chowchilla country?

A. Yes sir, I found some water in there irrigating, not in the Chowchilla ditch, but in a ditch right opposite the dam, right across the river. I forget the name of the ranch now. I found quite a good deal of water on the opposite side of the ditch.

Q. 81. They were irrigating considerable land over there?

A. Yes sir.

Q. 82. Whose land was that?

A. It was supposed to be Mr. Miller's.
Q. 83. Miller & Lux's?
A. Yes.
Q. 84. That was when the water could not be had from this canal in Stanislaus county?
A. Yes sir.
Q. 85. It was during that time?
A. Yes sir, it was during the time that they shut the stock water off on us.

682 Q. 86. Did you go to the officers of the company about this, about not getting any water in Stanislaus county, and there being water above?

A. Do you mean the sectionmen?
Q. 87. Yes.
A. Yes, sir, I spoke to our sectionman about it.
Q. 88. What did he say?
A. He said he thought he could get us plenty of stock water after that, and some water to irrigate with. He asked me if I was ready to irrigate.
Q. 89. I am referring now to the time before you went up the canal, Mr. Crow, when the shortage first made its appearance?
A. Yes, sir. I asked our sectionman there in regard to it, and he said there was no water in the canal; no water to be had at all.
Q. 90. Why, did he say?
A. It was not in the river. It was not to be had at that time.
Q. 91. Who were you talking with?
A. I was talking to Mr. Anderson, the sectionman.
Q. 92. Then, when you went up the canal to investigate, the water was immediately turned in and turned down into Stanislaus county?
A. I guess it was a week or ten days after we got back; a week, before we got water.
Q. 93. Did Anderson, the canal boss there, come to see you about it?
A. He spoke to me about it the day I got back, and asked me if I was ready to irrigate. I told him I was any time he furnished

683 me the water.

Q. 94. Then, as soon as you went up to investigate, the water was turned in and run down to Stanislaus county?

Mr. TREADWELL: We object. The witness has already stated it was a week or ten days after he returned. Do not put words into his mouth.

A. I said I got water in about a week or ten days afterwards.

Cross-examination.

Mr. TREADWELL:

X Q. 1. What time was it that you made that trip, Mr. Crow?
A. I think it was in October.
X Q. 2. Could you tell about what part of October?
A. No sir, I could not.

X Q. 3. Have you anything that you could fix that date by?

A. I could fix it by asking one of the gentlemen here present. They could probably enlighten me on the date.

X Q. 4. There is nothing that you yourself remember nearer than what you have stated?

A. No sir.

X Q. 5. How much water did you find running into the canal at the dam on that occasion?

A. I could not tell you exactly in inches; what we call two heads of water.

X Q. 6. That is what it appeared to you, to be two heads?

A. Yes, sir, about two heads.

X Q. 7. That is to say, if that quantity had been down at your canal, you would have called it two heads there?

A. Yes sir, that is on our side of the river, the west side.

684 X Q. 8. Down at your place?

A. Yes sir.

X Q. 9. Anywhere around there?

A. Yes sir.

X Q. 10. The canal that you speak of, on the east side of the river, that was then taking water, heads in the river considerably above this canal?

A. Yes, sir.

X Q. 11. When you went up to that dam, the dam was wide open, was it not, so as to admit all the water into this canal that could be got out of the river?

A. Yes sir, the headgate was open.

X Q. 12. The headgate was open and the waste gate closed?

A. Yes sir.

X Q. 13. The waste gate that let water down the river was closed, was it not?

A. They were putting in a new dam at that time.

X Q. 14. This was during the construction of the new dam?

A. During the construction of the new dam.

X Q. 15. There was a tight dam there, and all the water that could be got into the canal was running into it?

A. I think so, from the old brush dam.

X Q. 16. Do you know how much loss of water there is on the way from the dam to Stanislaus county?

A. No sir.

X Q. 17. You know there is considerable?

A. Yes sir.

X Q. 18. In that ditch and all ditches?

A. Yes sir.

X Q. 19. It is difficult to get a small quantity of water so far down?

A. It is not difficult to get a head of water down there.

X Q. 20. I don't know if you quite understand me. Suppose you were to turn in at the head of this canal, 70 miles above the

685 end of it, a single head of water; could you get any of it down to Stanislaus county?

A. In the course of time, yes.

X Q. 21. How long would it take to get it down there?

A. I suppose it would take ten days or two weeks probably to get one small head.

X Q. 22. Do you think it could be got there in two weeks with one small head?

A. Yes sir, I think it could.

X Q. 23. Did you ever see it done?

A. No sir; by closing all your stop-gates, and stop all this leakage out, I think the head of water would run down there in two weeks.

X Q. 24. As a practical farmer, and thoroughly acquainted with irrigation, you would say, would you not, that it is not economical or safe to attempt to divide a small head of water between different irrigators, is it?

A. Well, I don't know.

X Q. 25. I will ask you another question: Take *this* these two heads of water that were turned in at the head of the canal: Suppose the company gave every one water out of that. Would any of that water ever get down to Stanislaus county?

A. No sir. They could run those two heads of water down to the head of the canal in Stanislaus county.

X Q. 26. By giving no one in Fresno or Merced any water?

A. No sir. They could run it down, and distribute one head in Merced and one head in Stanislaus.

X Q. 27. You think that the quantity of water that you
686 saw there could have been divided into two safely?

A. Yes sir, taking both sides of the——

X Q. 28. I am not talking about the water on the east side, but the water that was in the company's canal. That is all I am speaking of. Would it not have been a serious loss to have attempted to divide that head of water?

A. To divide it all the time?

X Q. 29. Just then. Would not the proper way to be, to give it turn about?

A. Yes sir.

X Q. 30. Would not that have been the proper way?

A. That would have been a fair way.

X Q. 31. To give it to the people in Merced county for a while, and then to give it to the people in Stanislaus county for a while?

A. Yes sir.

X Q. 32. That is actually what they did do, is it not?

A. They were a long time about it.

X Q. 33. For how long a period at that time was it that the people in Stanislaus county did not get any water?

A. I guess it must have been close on to two months.

X Q. 34. Are you quite sure about that, Mr. Crow?

Mr. FULKERTH: They had to put up windmills, he says.

Mr. TREADWELL: I am not asking you, Mr. Fulkerth, but Mr. Crow, if he knows. I do not want to be interrupted.

A. I would not be positive about it. I don't think we got any water after—yes, it was two months.

X Q. 35. That you did not get any at all?

A. Yes sir.

X Q. 36. Last year was a very dry year, was it not?

A. Yes sir.

687 X Q. 37. The water was lower in the river than you have ever seen since you were there?

A. About as low as I ever saw it.

X Q. 38. How many times did you ever see the water as low as it was last year?

A. I don't know as I ever saw it any lower than it was last year, not more than once, anyway.

X Q. 39. Not more than once?

A. I don't think so.

X Q. 40. I understand that you have been farming your home place for some seventeen years?

A. About that, yes sir.

X Q. 41. You had farmed in that country before that time, had you not? I mean by "farming," including stock-raising, and everything of that kind.

A. Yes sir.

X Q. 42. During all the twenty-five years that you lived there, you have been engaged in that or similar business?

A. Engaged in stock business most all the time.

X Q. 43. You were living in this country when the canal was first built into it, were you not?

A. Yes sir.

X Q. 44. How did the population of that part of Stanislaus county before the canal was built compare with its population immediately afterwards?

A. Of course, it settled up very fast since the canal was built.

X Q. 45. As soon as the canal was built?

A. Yes sir.

X Q. 46. Quite a large town, the town of Newman started up right away?

A. Newman is all built up since.

688 X Q. 47. About what is the population around Newman that has come in there?

A. I suppose 500 or 600.

X Q. 48. Newman is in Stanislaus county, is it not?

A. Yes sir.

X Q. 49. I understood you to say, Mr. Crow, that you never made any money at stock-raising in that place. Do I understand you to mean that, that you never made anything in your whole experience in farming?

A. I don't recollect saying I never made anything.

X Q. 50. I understood you to say that. I thought you hardly meant that. What is the fact? You have made farming fairly profitable?

A. Yes sir.

X Q. 51. You have got along very well?

A. Tolerably well.

X Q. 52. You are more well-to-do today than a good many of your neighbors, are you not?

A. I suppose I am.

X Q. 53. You are a pretty well-to-do man?

A. Yes sir.

X Q. 54. You are a thorough farmer, and farm with care and economy?

A. I cannot say I am a thorough farmer. I do not farm much. My business is stock-raising.

X Q. 55. Stock-raising is a branch of farming. I am including that.

A. Yes sir.

X Q. 56. In doing that, it is necessary for you to raise feed for your stock?

A. Yes sir.

X Q. 57. One thing I suppose you do is to raise alfalfa?

A. Yes sir.

689 X Q. 58. How much alfalfa do you raise? How many acres do you usually keep in alfalfa?

A. I think I have 230 or 240 acres.

X Q. 59. How long have you had that much alfalfa?

A. I have had ten or twelve years that much.

X Q. 60. You have been accustomed to irrigate it regularly, have you not?

A. Yes sir, I irrigate it most every year.

X Q. 61. And you have always had to pay, and have paid the company their full rates for that water, have you not?

A. Yes sir.

X Q. 62. About how many head of stock have you found you were able to keep per acre of alfalfa?

A. I don't think I could keep more than a head to the acre.

X Q. 63. That has been about your experience, one head to the acre?

A. That is to make it profitable. I suppose a man could possibly keep two head alive on it.

X Q. 64. You would not regard that as a profitable way of doing?

A. No sir.

X Q. 65. Do you ever cut alfalfa for hay?

A. Yes sir.

X Q. 66. Through a whole season, that is, through a whole hay season?

A. No sir.

X Q. 67. How many crops do you cut of hay in a year, usually, I mean?

A. Off the same piece of land?

X Q. 68. Off the same piece of land?

A. I have never cut over three crops.

X Q. 69. How many crops, in ordinary farming, can be cut off irrigated alfalfa?

690 A. You can cut three crops, possibly four in some seasons.

X Q. 70. About how much in that vicinity? Take your own land and the land of others around there. Suppose that all the hay is cut that can be cut from irrigated alfalfa. How many tons would it average year by year? How many tons to the acre?

A. Taking it on an average, I suppose about a ton and a half.

X Q. 71. Do you mean to a cutting?

A. Yes sir, to a cutting.

X Q. 72. So that you could get at least six tons a year on an average of irrigated alfalfa, cutting four times?

A. Cutting four times, you would get six tons.

X Q. 73. You have yourself got as high as eight tons in a single season?

A. I don't think I ever cut one piece of hay more than three rimes.

X Q. 74. You have known your neighbors to cut as much as eight tons at a time?

A. Some favored pieces, yes.

X Q. 75. You think the average would not be that much?

A. No sir, I don't think so.

X Q. 76. In land of similar character. Take your own land, for example, without irrigation: how much could you do that with that alfalfa, without irrigation at all?

A. You could not cut any at all without any water at all.

X Q. 77. You could not make your alfalfa live, could you, through year after year?

A. No sir, without we could flood it.

691 X Q. 78. Did you ever know any one in that country to try to raise alfalfa before the canal was put in there?

A. I think my father had one piece sowed before the canal came, but then he irrigated in the winter from the creek, from Orestimba creek, from mountain water, that would live over until next season, provided the gophers would not eat it all up.

X Q. 79. Taking the average of alfalfa land round that section of the country, and taking the average of years as they go, what is the value of the usual proceeds of an acre of alfalfa? How much is a field of alfalfa worth by the year? I do not mean taking the expenses out, I mean the gross amount you can get for it, either by feeding it or cutting it, or both combined.

A. It varies.

X Q. 80. Yes, it varies. All I want is an average; that is a thing that a farmer is supposed to know.

A. I suppose about $5 an acre for the year.

X Q. 81. Gross proceeds or net proceeds?

A. That would be net proceeds.

X Q. 82. What I wanted to get was the gross proceeds, not taking out any of the expenses at all.

A. I don't know whether you would call it net or gross. If you have a field of alfalfa, and a man wants to rent it, and you ask him $5 an acre, he takes it and pays the water bill.

X Q. 83. He pays all the water expenses?

A. He pays all the water expenses, from $5 to $6.

692 X Q. 84. Would you say that on the average that would be about a customary price?

A. Yes sir.

X Q. 85. As things run there?

A. Yes sir; taking it year after year.

X Q. 86. In some years it would be worth more than that?

A. In the last two years it has been worth a good deal more.

X Q. 87. It also depends somewhat on the price of feed?

A. Yes sir.

X Q. 88. Speaking of your father's use of the waste water down in Orestimba creek, you yourself never knew anything about what arrangement he had with the canal company, did you?

A. Only just what I heard him say he told me.

X Q. 89. You never saw any writing about it?

A. No sir.

X Q. 90. You never heard any of the officers of the canal company say anything about it?

A. No sir.

X Q. 91. With regard to your estimate of the wild and uncultivated land irrigated by Miller & Lux, I understood you to say it was some 60,000 to 75,000 acres. You would not want to stand very closely to that estimate?

A. I don't know. I think that is a fair estimate of it, from what I have seen of it. I think it is.

X Q. 92. You would not insist upon that as against an actual survey, I suppose?

A. No sir.

X Q. 93. During the period since the canal has been in that country, you have been tolerably well acquainted with the price of land in that country, have you not?

A. Yes sir.

693 X Q. 94. You have known about the sales and everything of that kind?

A. Yes sir.

X Q. 95. Take any piece of land immediately on that canal and immediately above it, so that the water cannot be got onto it, but which is of the same quality as a piece immediately below it which can be irrigated from the canal. What would be the difference in price between those pieces of land—since the canal has been there?

A. The land on the ditch is worth about double, at the outside.

X Q. 96. And has sold that way right straight along, as a rule?

A. As a rule, yes, sir.

X Q. 97. About how much on an average do people pay there for a piece of fairly good alfalfa land; that is, just the bare land? How much an acre would it sell for in that country, where water can be obtained on it from the canal?

A. It depends on the locality.

X Q. 98. Around in your locality?

A. Generally about $60 or $70 an acre.

X Q. 99. That is not either extra choice land or extra poor land?

A. No sir.

X Q. 100. A fair quality of land?

A. Fair average land.

X Q. 101. Your land is somewhat better than that. You have an extra choice piece?

A. My home place I don't know is extra choice. I suppose it is worth $60 to $75 an acre.

X Q. 102. About an average piece, then, is it?

A. If I put it on the market, I do not suppose I would get over $75 an acre for it. It is well improved.

694 C. C. EASTIN, called for respondents, sworn.

Mr. STONESIFER:

Q. 1. What is your name, age, residence and occupation?

A. My name is Cassius C. Eastin; age, 59; residence near Newman; occupation, farmer and stock-raiser.

Q. 2. How long have you resided near Newman, Stanislaus county?

A. I guess for the last thirty years or more, off and on.

Q. 3. During that period have you been engaged more or less in farming and stock-raising?

A. Yes sir.

Q. 4. That has been your chief occupation, has it?

A. Yes sir.

Q. 5. What kind of stock?

A. Cattle, horses, mules and sheep.

Q. 6. Do you own any land below the canal of the San Joaquin & Kings River Canal & Irrigation Company?

A. Yes, sir.

Q. 7. How much?

A. I guess about 500 acres.

Q. 8. Subject to irrigation from this canal?

A. Yes, sir.

Q. 9. How much of that do you irrigate from the canal, Mr. Eastin?

A. I have irrigated most of it. I have irrigated it all. It is not all in alfalfa. I irrigated some of it for grain.

Q. 10. Why is it it is not all in alfalfa?

A. I did not think I could make it pay by putting it in alfalfa.

Q. 11. Did the rate that the company had or the use of the
695 water, have anything to do with it?

A. Yes sir.

Q. 12. From your experience as a stock-raiser and water consumer, Mr. Eastin, from this canal, would you say that a $2.50 an acre would be a fair rate to the water consumer?

Mr. TREADWELL: We object. That is a conclusion which the witness is not entitled to testify to. He can testify only to the facts.

A. I should say not.

Mr. STONESIFER:

Q. 13. Could the water consumer pay a rate of $2.50 an acre, and make a fair profit upon his investment there?

Mr. TREADWELL: Same objection.

A. I can't.

Mr. STONESIFER:

Q. 14. If you cannot, what would you say about some of your neighbors?

A. I would say the same about them.

Q. 15. Don't you know as a fact that some of them have quit it?

A. Yes, sir.

Q. 16. Because they could not pay the water rate?

A. Yes, sir.

Q. 17. And make it pay?

A. Yes, sir.

Mr. TREADWELL: I do not care to make objections all the time, but I will have to do it if you are going to ask leading questions like that. I shall object to every one of them hereafter. I have never asked such questions, and do not propose to.

Mr. STONESIFER: The record shows you did with your own witnesses.

696 Mr. TREADWELL: Only as to uncontroverted matters and matters of course. I did not put words in their mouth.

Mr. STONESIFER:

Q. 18. Do you know this country that lies below the canal of the complainant?

A. Yes sir.

Q. 19. How long have you known that country?

A. I have known it for thirty years, I guess.

Q. 20. You knew it then, before this canal was built?

A. Yes sir.

Q. 21. And you have seen all the changes that have been going on there since the canal was built?

A. Yes sir, most of them.

Q. 22. Have you been through there many times?

A. Yes sir.

Q. 23. Did you ever observe the amount of uncultivated land that Miller & Lux irrigated from this canal?

A. Yes sir.

Q. 24. From what you have observed, Mr. Eastin, are you able to make a fair estimate of the amount of land that they irrigate that is not cultivated?

A. I think so.

Q. 25. Just give us your estimate.

A. I should think 70,000 or 75,000 acres.

Q. 26. How do you arrive at that estimate, Mr. Eastin?

A. Well, I traveled over it about ten days ago. I started in at

Dutch Corners, and I went to Los Banos, which is considered about 25 miles.

Q. 27. What did you observe there?

A. Well, I think that 20 miles of that distance, there was water for two miles wide.

697 Q. 28. You are speaking of an average?

A. Yes sir, I average it up.

Q. 29. In some places it might be narrower and some places wider?

A. Yes sir. Some places it was a mile, and some places it was four miles.

Q. 30. What else did you observe in making up that estimate?

A. Then I went from Los Banos to Dos Palos, which is 14 miles, and I think there was 10 miles that was two miles wide.

Q. 31. On an average?

A. On an average.

Q. 32. What else?

A. Well, then I went to Santa Reita ranch, and from there to Los Banos I traveled over 14 miles, which I think would average 5 miles wide.

Q. 33. All of that country was irrigated, was it?

A. It has been irrigated. There was water over a great portion of it then and now, running in all the time.

Q. 34. What condition was the land with respect to the control of that water?

A. Before the water was on it?

Q. 35. I mean with respect to checks and bridges and ditches.

A. Every slough was checked up and boxes in it. When they would fill one check, they would open a box and let it down to the other, and would flood the land below it.

Q. 36. You found there a perfect system prepared for irrigation?

A. Yes sir.

Q. 37. Of this wild, uncultivated land?

A. Yes sir.

Q. 38. Did you see any fat cattle on it?

698 A. Yes sir, all fat.

Q. 39. Only for this water, there would have been no grass there?

A. No sir.

Q. 40. You had seen that same land before ever it had been irrigated; before the canal was built?

A. Yes sir. It was sage-brush land, a great deal of it, with no feed on it thirty years ago.

Q. 41. What did you see there as to grass?

A. I saw tules and swamp grass and water-cress. There was very fine feed for cattle.

Q. 42. Different kinds of grasses?

A. Yes sir.

Q. 43. Were the cattle fat?

A. Yes sir.

Mr. TREADWELL: He answered that before.

Mr. STONESIFER:

Q. 44. About how many cattle did you see there, as near as you can estimate it in a rough way, as being fed on that irrigated land?

A. I could not say. I did not pay much attention to it. I saw a great many cattle. I believe 30,000 head could be fed there until the 1st of September.

Q. 45. What is the distance from Dos Palos to Dutch Corners?

A. About 35 miles by road, I believe—no, 25. From Dos Palos?

Q. 46. Yes.

A. 14 and 25. It would be 39 miles.

Q. 47. And from Santa Reita to Dutch Corners, how far is it?

A. 15 from Santa Reita to Los Banos, and it is 25 from Los Banos to Dutch Corners.

Q. 48. That would be about 40 miles, then, from Santa
699 Reita to Dutch Corners?

A. Something in that neighborhood, yes sir.

Q. 49. You saw cattle all through there all the way along, on that visit?

A. Yes sir.

Q. 50. Mr. Eastin, do you know anything about the discriminations practiced against Stanislaus county since the water rate has been fixed by the board of supervisors.

Mr. TREADWELL: We object to the question on the ground that it assumes that there were discriminations.

Mr. STONESIFER: I asked him if he knows.

Mr. TREADWELL: You asked him if he knows about the discriminations. You are not entitled to ask such a question.

Mr. STONESIFER: I will change the question.

Q. 51. Do you know whether there have been any discriminations by this canal company against the water consumers of Stanislaus county since the rate has been fixed by the board of supervisors?

A. Only by what I have seen.

Q. 52. Just tell us what you have seen there.

A. Last fall they got stock water as far down as Mr. Miller's ditch that runs into the McPike place.

Mr. FULKERTH:

Q. 53. That is at Dutch Corners, is it not?

A. Yes sir, for stock water only, and every once a week they would run it down in my section. It would not reach to Crow's Landing, but I got stock water; every three or four days they would turn the stock water down to us.

Mr. STONESIFER:

Q. 54. The lower end did not get any?

700 A. I think not.

Q. 55. Did you make any investigation to ascertain the cause of that, Mr. Eastin? Did you make any inquiries?

A. No sir, I did not.

Q. 56. Did you not inquire of the officers of the company about it?

A. I asked the sectionman why it was that it came down to where Miller would want it, and we could not get it below. He said it was more than he could tell.

Q. 57. He said it was more than he could tell?

A. Yes sir; he knew nothing about it.

Q. 58. You called attention to the fact that it was running into Miller's field?

A. Yes sir.

Q. 59. At what is called the McPike ranch?

A. Yes sir.

Q. 60. And below there, there was no water?

A. He said he would try and keep us in stock water. He did turn it down once in a while.

Q. 61. Whose place is the McPike place?

A. It belongs to Miller & Lux.

Q. 62. The water was running in there?

A. Yes sir.

Q. 63. When you could not get any below?

A. Yes sir.

Q. 64. Did the people have to put up windmills in order to keep their stock from dying?

A. Some of them did. I did not.

Q. 65. You were further up?

A. Yes sir.

Q. 66. How far are you from the end of the canal?

A. The lower end?

Q. 67. Yes, from the terminus of the canal.

A. I guess 8 or 9 miles.

701 Q. 68. You are near the Merced line?

A. Yes sir, within a mile of it.

Cross-examination.

Mr. TREADWELL:

X Q. 1. Where is this McPike ranch, Mr. Eastin?

A. It commences at what they call Dutch Corners.

X Q. 2. That does not inform us anything.

A. It is in Stanislaus county and Merced. Most of it is in Merced.

Mr. FULKERTH: Where is it with reference to Newman? That would locate it.

A. Half a mile east of Newman it commences.

Mr. TREADWELL:

X Q. 3. Whereabouts was the ditch that you saw, at this particular time, running water into that place?

A. At the terminus of the section above me. The upper section just comes to my land.

X Q. 4. Say about how many miles from where you get the water; how many miles from your ditch?

A. About 40 foot runs down to my land.

X Q. 5. It is right close to your ditch, then?

A. Yes sir.

X Q. 6. How much water was running down that ditch into the McPike place?

A. Just stock water.

X Q. 7. That was at the time of the great scarcity of water, was it not?

A. Yes sir.

X Q. 8. Last season was a very dry season, and there was
702 very little water in the river?

A. Yes sir.

X Q. 9. That scarcity existed all along the line of the canal so far as you knew it, did it not?

A. Yes sir, to a certain extent.

X Q. 10. Water had to be given to different people in turns. People had to be kept waiting a good while to get water during the whole of that season?

A. No sir.

X Q. 11. I mean during the latter part of the season.

A. The latter part of the season, we did not get any until very late.

X Q. 12. After August there was hardly any water in the canal, was there?

A. Not down our way.

X Q. 13. With regard to this tract of land that you described, that you saw a great deal of water on and know has been irrigated otherwise, do you know where that water came from that irrigated that land?

A. Yes sir.

X Q. 14. Where did it come from?

A. From the canal.

X Q. 15. Directly from the canal?

A. Yes sir.

X Q. 16. Did you see it running out of the canal all the way along on this land?

A. No sir. I saw the direction it was coming from. I could tell where it was coming from. There was no water south of the road I traveled up but the canal, no creeks that had water in them.

X Q. 17. You draw that conclusion from the fact that there was no other water in the country at that time of the year except what comes from the canal?

A. That is it.

X Q. 18. Which way does the watershed run from Los
703 Banos creek going up the valley, which way does the water run; not in the canal, but the natural watersheds?

A. I guess it would run east and west.

X Q. 19. Pretty near up the river it runs, the sloughs, the natural drainage of this land, does it not run pretty near up the river from Los Banos creek?

A. From Los Banos creek it runs nearly to Dutch Corners.

X Q. 20. Do you know the Kreyenhagen slough?

A. No sir, I don't know that. I know where Kreyenhagen used to live.

X Q. 21. Don't you know a large slough that runs for many miles through that country?

A. Yes sir.

X Q. 22. About parallel with the course of the canal?

A. Yes sir.

X Q. 23. Which way does the water run in that slough; the same as in the canal, or opposite to it?

A. I think the same way as the canal; that is, after it was dammed, and thrown up. He dams it and throws it out.

X Q. 24. Have you ever seen the water running in that slough?

A. I don't know that I have.

X Q. 25. You don't know, then, which way it does run?

A. No sir.

X Q. 26. When people are irrigating, take the usual way that they irrigate in that country, do they use up all the water that goes onto their land?

A. Yes sir, as a general thing they do. I do, and I live near the canal.

X Q. 27. I did not ask what you do. I am speaking of the
704 average irrigator. Is it not a fact that the average irrigator takes more water on his land than he can use, in order to cover his checks?

A. A great many of them do.

X Q. 28. That water, when he gets through irrigation, has to run off his land on to some one else's land?

A. Either that, or drains back into the ditch.

X Q. 29. Do you know, Mr. Eastin, whether or not a very great quantity of that water that is used in irrigation and passes off from those lands does not pass off into these sloughs and so get into Miller & Lux's land, and they irrigate a large quantity of land with that water?

A. I do not think in that section of the country they irrigate a great deal of alfalfa.

X Q. 30. Who irrigates a great deal of alfalfa?

A. Miller & Lux.

X Q. 31. That is not what I asked you. You are speaking about irrigation on Miller & Lux's wild and uncultivated land. I asked you whether or not you do not know it to be a fact that a great deal of that irrigation has been done by Miller & Lux with water once used for irrigation by other people and passes off gradually, collected into these natural sloughs, and so flows on to Miller & Lux's land?

A. I do not know. I guess some of it they would use that way. I don't know how much.

X Q. 32. At the time that you saw this great quantity of water on that land, as you represented it, that was the time when the canal was running absolutely full?

A. Yes sir.

705 X Q. 33. And when everybody was getting all the water they wanted?

A. Yes sir.

X Q. 34. Have you ever known Miller & Lux to ever irrigate any of their wild and uncultivated land at the time there was any scarcity of water?

A. Not to my knowledge. I have heard they did.

X Q. 35. I am only asking what you know.

A. I don't know.

X Q. 36. Of the 500 acres which you cultivated there, how much have you in alfalfa?

A. I put in about 125 acres this year, and I had in about 100 before that.

X Q. 37. How long did you have 100 acres in alfalfa there?

A. I guess for six years.

X Q. 38. During that six years, you never made any money off of that 100 acres of alfalfa?

A. No sir.

X Q. 39. Not a cent?

A. I guess I made something; nothing to justify me in the work I did.

X Q. 40. What else did you raise on your land besides alfalfa?

A. I raised grain.

X Q. 41. Did you make any money off of that?

A. Very little for the last six years.

X Q. 42. How do you manage to live?

A. We kind of do it in Missouri fashion.

X Q. 43. Missouri fashion is very good. I have known of lots of rich Missouri farmers. You are pretty well off, Mr. Eastin?

A. Just tolerable.

706 X Q. 44. You get along pretty well?

A. Yes sir.

X Q. 45. Never get into debt, or have any trouble of that kind?

A. Yes sir, I am in debt some.

X Q. 46. I mean you never have any debts that you cannot pay?

A. Not so far.

X Q. 47. You have raised a considerable family?

A. Yes sir, eight children.

X Q. 48. Always have been comfortable?

A. Yes sir, always been comfortable.

X Q. 49. Yet you paid $2.50 an acre for this water?

A. Yes sir.

Redirect examination.

Mr. STONESIFER:

R. D. Q. 1. You only irrigated, you say, 100 acres out of 500 that you got below the canal?

Mr. TREADWELL: He did not say that.

A. No sir. Part of it belongs to the Wilson ranch, and I own half of it. On my own place I only had 100 acres.

Mr. STONESIFER:

R. D. Q. 2. Why is it you did not have it all in alfalfa?

A. Because it would not pay, I don't think.

R. D. Q. 3. You put in just sufficient to sustain your stock?

A. I moved there six years ago, and from that time it has not paid. I was living at the Wilson ranch before that.

R. D. Q. 4. You had a lot of stock when you moved into your present place?

A. Yes sir.

R. D. Q. 5. You had to keep those stock?

A. Yes sir.

R. D. Q. 6. You put in 100 acres below the canal in order
707 to keep them alive?

A. Yes sir.

R. D. Q. 7. You have not extended your operations since you moved there?

A. Yes sir.

R. D. Q. 8. The balance of the land below the canal you farm in grain?

A. Yes sir.

R. D. Q. 9. Just as you would as though it was above the canal?

A. The same.

R. D. Q. 10. Since the rate has been reduced, you have put in how much more of your land?

A. I have put in something over 100 acres this year.

R. D. Q. 11. This year?

A. Yes sir.

R. D. Q. 12. I understood you to say in answer to Mr. Treadwell that this water that flows in upon this uncultivated land comes from the canal.

A. Yes sir. I think it comes from those creeks sometimes in the winter when they come down.

R. D. Q. 13. That is in the winter time?

A. Yes sir.

R. D. Q. 14. But in the summer time it cannot come from the creeks?

A. No sir.

R. D. Q. 15. Those creeks dry up?

A. It did not come down this winter at all.

R. D. Q. 16. Those creeks always dry up early in the spring, don't they?

A. Yes sir.

R. D. Q. 17. That is, when they do come down?

A. Yes sir.

R. D. Q. 18. There is very little irrigation, is there not, above this wild, uncultivated land that you saw irrigated?

Mr. TREADWELL: Above?

Mr. STONESIFER: Above. Between there and the canal.

708 A. Very little, yes.

R. D. Q. 19. So that, was it possible for the amount of water

that you saw coming down there to be waste water from people who are irrigating above?

A. No sir, it was not. It could not have been.

R. D. Q. 20. So that it must have come directly from the canal?

A. Yes sir; that is, the majority of it; the greatest portion of it.

R. D. Q. 21. When water is wasted by the water consumers other than Miller & Lux, the company charges them for it, does it not?

A. They never charged me.

Mr. TREADWELL: I do not understand that question myself, and I do not see how the witness can. Do you mean that the company makes a charge for waste water?

Mr. STONESIFER: Yes.

Mr. TREADWELL: You know the company does not do any such thing.

Mr. STONESIFER: I mean, if the consumer wastes water, the company comes after him with a bill to pay for it.

Mr. TREADWELL: I should like you to show me one. You cannot show a dollar of such a thing. We have never collected a dollar for that. I wanted to understand your question.

The WITNESS: They never charged me for any waste water.

Mr. STONESIFER:

R. D. Q. 22. Have you ever had any waste water?

A. Only in my last check, when I would irrigate, I would have that full, and have it stay eight or ten hours, and then I
709 would turn it out on some one else's land; either turn it out there or run it back in the ditch.

R. D. Q. 23. That is, the water I am talking about. Is it not a rule of the company that if you do that, you have to pay for it?

A. I have heard the boss say, if they caught us wasting it, they would make us pay for it. I never heard of them making any one *paid* for it.

R. D. Q. 24. They never caught you at it?

A. No sir.

Recross-examination.

Mr. TREADWELL:

R. X Q. 1. It would be well if they would establish such a rule?

A. Yes sir, it would be nothing but right.

R. X Q. 2. There is an enormous quantity of that water wasted, and they ought to establish such a rule? As it is now, it is a discrimination of the good farmers against the company, instead of the company against the farmers. When was it that you saw this water on Miller & Lux's land, when you say there was but little irrigation between it and the canal?

A. About eight or ten days ago.

R. X Q. 3. Eight or ten days ago?

A. Yes sir.

R. X Q. 4. At that time you are quite sure there was no land being

irrigated between it and the canal sufficient to let any quantity of waste water go down to Miller & Lux's?

Mr. STONESIFER: He did not say that.

Mr. TREADWELL: I want to know what he did say.

710 A. Not to let a hundredth part go down.

R. X Q. 5. How much was going down?

A. There were 25,000 acres nearly under water.

R. X Q. 6. Under water?

A. The biggest portion of it was under water.

R. X Q. 7. I simply ask you this; because we can show what was irrigated.

A. In the slough it was belly-deep to cattle standing in there.

R. X Q. 8. You irrigated grain as well as alfalfa?

A. Yes sir.

R. X Q. 9. When you were farming on the Wilson place, how much alfalfa did you have there?

A. About 600 acres.

R. X Q. 10. Since you moved to your present place, you kept up your 100 acres and kept your cattle on it?

A. I sold the biggest part of my cattle when I sold the ranch.

R. X Q. 11. When you sold what ranch?

A. The Wilson ranch.

R. X Q. 12. I mean, since you went onto your present ranch, how many head of cattle did you take with you to your present ranch?

A. Very few. Some milch cows, and 125 head of mules and horses.

R. X Q. 13. Practically you have not been in the stock-raising business since you went to your present ranch?

A. Only raising mules.

R. X Q. 14. How many on an average do you still raise?

711 A. I guess 10 or 12, and sometimes 3 or 4, just as the notion takes me, a year.

R. X Q. 15. You cut hay, do you not?

A. Not alfalfa.

R. X Q. 16. You do not cut alfalfa?

A. No sir.

712 H. F. SHERMAN, called for the respondents, sworn.

Mr. STONESIFER:

Q. 1. What is your name, age, residence and occupation?

A. My name is Hiram F. Sherman; age, 45; residence, Newman, near by; occupation, farmer, and I handle some stock.

Q. 2. How long have you resided near Newman?

A. Twenty years.

Q. 3. Is your farm below the canal of the complainant?

A. Yes sir.

Q. 4. And subject to irrigation from it?

A. Yes sir.

Q. 5. Is it in alfalfa?

A. About 150 acres.

Q. 6. How much have you all together?

A. 235 acres.

Q. 7. Since you have resided there in the last twenty years, has your occupation been principally handling your ranch below the canal, raising stock on it?

A. Yes sir; I have owned that about seventeen years.

Q. 8. Have you had an extensive experience in the handling of stock and irrigation of land there?

A. I have irrigated more or less ever since I have been there, and I have always had stock of different kinds.

Q. 9. Are you acquainted with the country that lies below this canal of the complainant from its head to its terminus?

A. I am pretty well acquainted as far up as Dos Palos.

Q. 10. Have you been over it many times?

A. Yes sir, I have been over it very frequently.

713 Q. 11. Do you know where Miller & Lux's land lies below this canal?

A. Yes sir.

Q. 12. Have you been over that many times?

A. Yes sir; I used to farm a part of it, some of his land.

Q. 13. About how much of his uncultivated land below this canal is irrigated from the waters of the canal?

Mr. TREADWELL: When you say "his," do you mean Miller & Lux's?

Mr. STONESIFER: I mean Miller & Lux's.

A. There is 75,000 or 80,000 acres.

Q. 14. In what condition is it, Mr. Sherman? I mean this uncultivated land of Miller & Lux's that is irrigated.

A. It is prepared for stopping the water and turning it out at different places. There are dams across the sloughs, boxes in those dams, and at other places what I would term wing levees or dams.

Q. 15. In other words, they have a perfect system, have they not, by which they handle this water?

A. Yes sir.

Q. 16. I mean the water that goes over their uncultivated land from this canal?

A. Yes sir, they have.

Q. 17. What did you observe there in the way of growth of grass?

A. There are different kinds of grasses growing in those sloughs, and on the level land, all that is wet, covered with water, such as tules and rushes, swamp grass, we call it, and water-cress.

Q. 18. It is good stock feed, is it not?

A. Yes sir.

714 Q. 19. And cattle get fat on it?

A. Yes sir.

Q. 20. Does that enable Miller & Lux to sustain and keep there a large amount of cattle?

A. Yes sir.

Q. 21. It is a very profitable affair for them, is it not?

Mr. TREADWELL: We object to the question as leading.

A. It seems to be.

Mr. STONESIFER:

Q. 22. What do you mean by that?

A. I mean that the stock that is on the land proves that it is.

Q. 23. Do you arrive at that from your own observations?

A. Yes sir.

Q. 24. How long has there been going on, to your knowledge, this irrigation of that uncultivated land?

A. It began about fifteen years ago.

Q. 25. Has it been kept up ever since?

A. Yes sir, he has been extending it, preparing more land year after year.

Q. 26. From your experience as a farmer there, Mr. Sherman, and from what you have observed from the business of your neighbors in farming, is a rate of $2.50 per acre for water there a fair rate to water consumers?

Mr. TREADWELL: We object. That is a conclusion, and the witness is not entitled to testify to conclusions, but to facts.

A. I know from my own experience that it was not.

Mr. STONESIFER:

Q. 27. Why do you say that it was not a fair rate?

A. First-class land might possibly pay, small patches here and there. A person might possibly afford to pay $2.50 an acre,
715 but for my land, and the land of my neighbors around there, it would be too much, more than they could afford to pay.

Q. 28. I will have to go back to this uncultivated land of Miller & Lux's that is irrigated, and ask you how you arrived at 75,000 or 80,000 acres as your estimate of the amount that is so irrigated.

A. I took the distance in length and width from each field that was partially irrigated, that is, the part of the field that was irrigated, and from that way I could get a very close estimate of the amount of land that was being flooded.

Q. 29. Were those distances known to you?

A. Yes sir.

Q. 30. Just tell us how you arrived at your estimate; how you figured that out.

A. Well, the distance from the McPike place belonging to Miller & Lux in Stanislaus county to Los Banos is about 24 miles. The distance by rail is exactly 21 miles from Newman to Los Banos. That is about three miles difference in the direction that the water flows, and there is about 2 miles in width.

Q. 31. On the average?

A. Yes, sir, on the average.

Q. 32. Wider in some places and narrower in others,?

A. Yes sir. Then from Los Banos to Dos Palos is another similar strip.

Q. 33. What is the distance there?

A. The distance there would be 14 miles, and I presume it is wider than 2 miles. It would be on an average, but put it
716 at that. Then, after leaving the Santa Reita, coming towards Los Banos, there is a strip of land there below the Santa Fe grade that comes in from camp 13. As near as I can come at it, that strip is 10 miles long and 5 miles wide, flowing from camp 13 northeast to the river.

Q. 34. Camp 13 is an outlet, is it not, on the canal?

A. Yes sir.

Q. 35. For water?

A. Yes sir.

Q. 36. Are there any water consumers above this land that is irrigated from camp 13?

A. If there is any, it is a little barley or some little patch of grain that might be raised there, but no alfalfa that I know of at all.

Q. 37. In fact, are there any water consumers in there other than Miller & Lux?

A. No sir, or their tenants.

Q. 38. But no alfalfa?

A. No alfalfa that I know of. There might possibly be a small little patch here and there.

Q. 39. What benefits do Miller & Lux derive from this water that is flowing in upon the uncultivated land?

Mr. TREADWELL: You have gone over that very fully, Mr. Stonesifer.

A. What benefit do they derive from it?

Mr. STONESIFER:

Q. 40. That is, I mean, as to the land and as to their cattle.

Mr. TREADWELL: The witness testified it raised fine feed upon it and it was profitable for their cattle.

Mr. STONESIFER: Let me ask my questions, Mr. Treadwell.
717 Mr. TREADWELL: Go ahead. I simply wanted to save time, that was all.

A. It is improving the land very much.

Mr. STONESIFER:

Q. 41. The quality of the soil there is very poor?

Mr. TREADWELL: We object to the question as leading.

Mr. STONESIFER:

Q. 42. What is the quality of the soil there?

A. It is very poor, the generality of it.

Q. 43. What effect does this water coming in on it have on that very poor land?

A. This vegetation that is created from the overflow grows and falls down and enriches the land, and there is more or less sediment settling all the time in the sloughs that tends to increase the value of it very fast.

Q. 44. In other words, it is making good soil out of poor soil?

A. Yes sir.

Q. 45. And is it not levelling off the low places and filling them up?

Mr. TREADWELL: We object to that as leading.

Mr. STONESIFER:

Q. 46. Does it do that?

A. It would to some extent.

Q. 47. Mr. Sherman, do you know whether or not there are times that water is running out from the canal, and people above Stanislaus county are using it, when the water consumers in Stanislaus county cannot get any water?

A. They are generally favored, to the best of my knowledge.

Q. 48. Have you made any investigations to ascertain, or
718 made any inquiries to ascertain whether or not the water was not running over this uncultivated land of Miller & Lux's when they could not get water below?

A. I have known that to be a fact.

Q. 49. Just state what you know about that and when, Mr. Sherman.

A. Two years ago I know I wanted water to irrigate a piece of alfalfa, and I could not get it, and I know that water was running down the Garzas creek on to Miller & Lux's land at the same time.

Q. 50. That was a wasteway, was it?

A. Yes sir.

Q. 51. The Garzas creek is a wasteway from the canal, is it not?

A. Yes sir.

Cross-examination.

Mr. TREADWELL:

X Q. 1. When was that, Mr. Sherman?

A. That was two years ago.

X Q. 2. What date?

A. I cannot tell you the day exactly.

X Q. 3. Tell us as near as you can.

A. It was in the latter part of August.

X Q. 4. Can you give it any nearer than that?

A. I say the latter half of August, perhaps about the 20th.

X Q. 5. Did you make a demand for water at that time?

A. Yes sir.

X Q. 6. A written demand?

A. I did not make a written demand, no.

719 X Q. 7. Who did you make the demand of?

A. I made the demand of our section boss.

X Q. 8. Which one?

A. Anderson.

X Q. 9. What did he tell you?

A. He told me that the water was scarce, not to be had; some excuse of that description.

X Q. 10. Was there any at that time running in the canal near your place?

A. There was some.

X Q. 11. Anybody irrigating around you?

A. I think he had one head of water.

X Q. 12. And people in your county were irrigating with that head of water, were they?

A. Some were using that, yes.

X Q. 13. What was it you asked him for? To turn more water into the canal?

A. I asked him for water, and he said he had not it; that the water was scarce.

X Q. 14. What did you do then?

A. A day or two afterwards I took it on myself to take a ride up that field and see the condition of things, and I found considerable water.

X Q. 15. Where?

A. Running over this wild land.

Mr. STONESIFER: Wild land of who?

A. Miller & Lux.

Mr. TREADWELL:

X Q. 16. Running from where?

A. Running from the San Luis creek.

X Q. 17. I understood you to say from Los Garzas creek a
720 few minutes ago.

A. Yes sir.

X Q. 18. Was there or not water then running in Las Garzas creek from the canal?

A. I think there was water running in both creeks. They both empty into very nearly the same place.

X Q. 19. I want to know what you saw. You either saw it, or did not see it.

A. I saw it.

X Q. 20. You saw water in both those creeks running from the canal?

A. Yes sir.

X Q. 21. How many days was that after you had asked for this water?

A. That was the second day afterwards.

X Q. 22. How much water was running down each of those creeks?

A. A good head of water in each one.

X Q. 23. You saw it running out of the canal, did you?

A. Yes sir.

X Q. 24. You followed it to see where it went to?

A. I met it and followed it up to see where it came from.
X Q. 25. Did you see what land it was running on?
A. Yes sir.
X Q. 26. What land? Can you describe it in any way so that we can identify it?
A. Yes sir; in Salt Slough field.
X Q. 27. How many acres of that apparently was covered with water at that time?
A. I disremember just how much.
X Q. 28. About. How did it look to you?
A. There was a strip there of 2 or 3 miles long.
X Q. 29. Then you followed that up to see where it came from?
721 A. Yes sir.
X Q. 30. And you found it was coming out of the canal?
A. Yes sir.
X Q. 31. Did you report that to Mr. Anderson?
A. No sir.
X Q. 32. Did you report it to anybody connected with the canal?
A. I don't remember of speaking to anybody specially about it. I told some of my neighbors it was the case.
X Q. 33. I mean, anybody connected with the canal company?
A. I don't remember of doing so.
X Q. 34. How soon did you get water after that?
A. It was some time afterwards.
X Q. 35. Naturally. How much time?
A. I didn't make a memorandum of it.
X Q. 36. Did you finally get water?
A. Yes sir.
X Q. 37. The books of the company will, of course, show when you got it?
A. Yes sir.

Mr. STONESIFER: The books of the company will show anything.
Mr. TREADWELL: They will show enough for this, I guess.

X Q. 38. Your land is in Stanislaus county, is it not?
A. Yes sir.
X Q. 39. When you speak of 75,000 or 80,000 acres of land, you mean of land that is absolutely uncultivated?
A. Yes sir.
X Q. 40. Unplowed?
A. Yes sir.
X Q. 41. You do not include any land that is cultivated in any way?
A. No sir.
722 X Q. 42. None of this land was checked up, was it?
A. It is all checked.
X Q. 43. This uncultivated land?
A. Yes sir.
X Q. 44. Levees built across it?
A. Yes sir.

X Q. 45. And beside the levees that turned the water out of the slough, was it all checked up?

A. Yes sir. It is checked up in a general system.

X Q. 46. Is it checked up as you would check up a wheat field or an alfalfa field?

A. No sir, not as you would check up an alfalfa field.

X Q. 47. What do you mean by saying it is checked up, then?

A. I mean that levees are built across the low land to raise the water over the high land.

X Q. 48. High enough to raise it over the whole field?

A. No sir.

X Q. 49. This whole body of land is never flooded, is it—this land that you speak of?

A. There are some high knolls and some high ridges that are not flooded.

X Q. 50. It is fixed, however, so that this water is turned onto the land and use made of it as far as practically could be done?

A. Yes sir.

X Q. 51. That is what you mean, is it?

A. Yes sir, that is what I mean.

X Q. 52. This piece of land of yours of 235 acres, I understand you have owned for about seventeen years?

A. Yes sir.

X Q. 53. How did you get it?

A. I bought it.

723 X Q. 54. How much did you pay for it?

A. $7000, I believe, is what I paid for it; close to that.

X Q. 55. About $7000?

A. Yes sir.

X Q. 56. The canal was not there at that time, was it?

A. Yes sir.

X Q. 57. Seventeen years ago? Oh, yes. It was there.

A. Yes.

X Q. 58. How much is it worth now, at the market price?

A. Probably $65 to $70.

X Q. 59. An acre?

A. Yes sir.

X Q. 60. When you bought that land, were you able to pay for it in cash?

A. I did not pay for all of it.

X Q. 61. You had some mortgage on it?

A. Yes sir, I had a mortgage on it for about twelve years.

X Q. 62. How much capital did you have beside the land, at the time you started in to farm there?

A. I think about $3500, or something like that.

X Q. 63. What are you worth today, exclusive of your land?

A. I am worth the land, and that is about all.

X Q. 64. Nothing else? Nothing ahead?

A. Very little.

X Q. 65. How much is a "very little"?

A. If I was squared all up, I don't know as I would have anything ahead.

X Q. 66. Let us see: What stock have you got, Mr. Sherman, now?

A. I have got about 130 head of cattle.

X Q. 67. Do you owe anything on them?

A. Yes sir.

X Q. 68. On the cattle?

A. Yes sir.

724 X Q. 69. How much do you owe on them?

A. I think I owe about $2300.

X Q. 70. How much are the cattle worth at the market price of today—what you would sell them for?

A. I sold the beef out the other day; that is, they are not delivered yet. Of course, I do not know what they will bring.

X Q. 71. You can tell us about what such cattle are worth now. We do not want exact figures, and cannot expect them.

A. Those cattle are worth about $4000.

X Q. 72. What else have you in the shape of stock?

A. I have got some sheep.

X Q. 73. How many?

A. I have got about 1150.

X Q. 74. What are they worth?

A. I paid $2300 or $2400 for them—between those amounts.

X Q. 75. I want to know what they are worth now; what you consider them worth; that is all

A. I would take for them at the present time $2600.

X Q. 76. What other stock have you?

A. A few horses.

X Q. 77. That is, horses that you use in your work?

A. Horses that I use on the farm.

X Q. 78. You have enough for your farming purposes?

A. Yes sir.

X Q. 79. You have tools and machinery sufficient for common farming, have you not?

A. Yes sir.

X Q. 80. A good house?

A. Pretty fair.

X Q. 81. Good barns?

A. Pretty fair barns.

X Q. 82. Such as are rated as good in that country, are
725 they not?

A. Yes sir, they are considered about as good as any of my neighbors'.

X Q. 83. You have got a stock of hay on hand?

A. I have probably 30 tons.

X Q. 84. How are you using your alfalfa now?

A. I am feeding this stock on it.

X Q. 85. You are not cutting any alfalfa hay?

A. No sir.

X Q. 86. How much money do you owe now all together?

A. I owe about $6500.

X Q. 87. Have you any family?

A. Yes sir.

X Q. 88. How much of a family?

A. I have got a wife and four children. I raised the children. I don't think the alfalfa had much to do with that.

X Q. 89. Your alfalfa you have always irrigated regularly, have you not?

A. Yes sir, most every year.

X Q. 90. And did you ever irrigate your grain?

A. No sir.

X Q. 91. Never irrigated anything but alfalfa?

A. I never found it profitable to irrigate grain.

X Q. 92. Have you found it profitable to raise grain without irrigation?

A. Yes sir. I have got a good crop this year.

X Q. 93. You did not have a good crop last year, did you?

A. Well, pretty fair, yes, and on the same land.

X Q. 94. Of grain?

A. Of grain.

X Q. 95. On land that had never been irrigated?

A. Yes sir.

X Q. 96. You are a very lucky man. Going back to the
726 subject of Miller & Lux's irrigation of their uncultivated land. You say this began about fifteen years ago. What was it you mean began fifteen years ago?

A. About fifteen years ago they commenced flooding a piece of land from these two creeks that we were speaking of a while ago, the San Luis and the Garzas.

X Q. 97. What you mean is, they then began to use the water?

A. Yes sir.

X Q. 98. To take it out of the sloughs or creeks?

A. Yes sir.

X Q. 99. Before that time the water ran on towards the river, did it not?

A. I don't remember—yes, before that the water followed the sloughs.

X Q. 100. Followed the sloughs, and would find its way off to the river?

A. Yes sir.

X Q. 101. You mean this was the time that they began to utilize that water?

A. That is about the time that I first noticed this wild grass growing there. Up to that time I had not paid any attention to water running on that land, because I did not think the land was any account, and no thought of this kind ever came to my mind.

X Q. 102. As a matter of fact, that was very poor land before water was put on it, was it not?

A. Yes sir.

X Q. 103. The water has made an immense improvement on it, has it not?

A. It has.

X Q. 104. It is worth a great many times more that it was
727 before that water was put on it, is it not?

A. I would think so if I had the water to use on it.

X Q. 105. Taking the land as it was before the water was put on it and since, as you knew it, what difference should you say there was in value?

A. About double.

Redirect examination.

Mr. STONESIFER:

R. D. Q. 1. Mr. Sherman, is it possible for that water that goes over those uncultivated lands from the canal to be the waste water from consumers above the land?

A. No sir, it is not possible.

R. D. Q. 2. So that it comes direct from the canal?

A. Yes sir.

728 A. W. SOUTH, called for the respondents, sworn:

Mr. STONESIFER:

Q. 1. What is your name, age, residence and occupation.

A. My name is Albro W. South; my age is 63; I live in Union, Stanislaus county; occupation, farmer and stock raiser on a small scale.

Q. 2. How long have you been in that business of farming and stock raising?

A. Since the first beginning of the canal; I think in 1874.

Q. 3. How long have you resided up there where you are?

A. Twenty-two years.

Q. 4. How long have you known this west side country where this canal is?

A. Thirty-one years.

Q. 5. I have reference to the country through which this canal flows.

A. Thirty-one years. I used to run stock up in that country.

Q. 6. Before the canal was built?

A. Yes sir.

Q. 7. You were familiar with the nature of the soil and the kind of grass that grows there, were you?

A. Yes sir.

Q. 8. The country generally?

A. Yes sir; I was well acquainted with it, as a stock country.

Q. 9. Were you engaged in stock raising at that time over this country?

A. I was, yes sir.

Q. 10. Have you ever observed the changes that have taken place on the land of Miller & Lux since the canal was built?

729 A. I have.

Q. 11. Have you observed the amount of irrigation that is applied to their uncultivated lands?

A. Well, yes, I guess I could come very near it. Of course, I could not make it exact. I could make a rough estimate of it.

Q. 12. You are a surveyor, are you not, in addition to your occupation as a farmer?

A. Yes sir, I have followed that for a livelihood.

Q. 13. Have you surveyed out much land up in the neighborhood of this canal?

A. Quite a lot of it; most all in Stanislaus, and part in Los Banos, and along down through the country.

Q. 14. From your observations, Mr. South, what would be your estimate of the amount of uncultivated land that is irrigated by Miller & Lux from this canal?

A. That would have to be a rough estimate. I know the exact distance in length, but in width that is a guess; but my knowledge of the distances would give me a pretty good idea of the width of it.

Q. 15. Just state that.

A. I estimated the distance, following the old Santa Fe grade there to Dos Palos, would be about 36 miles in length, and I think it would average something over two miles; that is, between this grade and the canal; I mean the Santa Fe grade for the old railroad. Then I made an estimate from the Santa Reita ranch, taking that part of the country lying east and north from this Santa
730 Fe grade. That would average two miles and a half.

Q. 16. And how long?

A. It must be about 40 miles from the Santa Reita ranch, or 45, perhaps; on an air line, perhaps not over 40 miles.

Q. 17. What is your estimate of the acreage there?

A. You mean the entire acreage or what the water covers?

Q. 18. What is irrigated of this uncultivated land.

A. Well, it is something in the neighborhood of 70,000 acres. That is only a rough guess.

Q. 19. Mr. South, from your experience as a farmer, and from your observation of the farming operations of your neighbors below this canal, can you state whether or not $2.50 an acre is a fair rate to those water-consumers?

Mr. TREADWELL: We object to the question upon the ground that that is a conclusion which the witness cannot be permitted to draw.

A. I can come to conclusions in my own personal experience and knowledge. It has not been profitable to me. I could not afford to keep up that rate on the land that I have.

Mr. STONESIFER:

Q. 20. As a matter of fact, have you irrigated your land every year?

A. I believe I have missed two years since the canal first came down.

Q. 21. Why is it that it is not profitable to cultivate that land and irrigate it under a $2.50 rate?

A. Hay is too low, and it does not raise enough stock to the acre to make it profitable.

Q. 22. Is it an expensive matter to keep up and maintain
731 the checks and ditches on this irrigated land?

A. It has been with me, and I think I can get along about as well as my neighbors. The breakage of the ditches and the checks, and many other things that we have to contend with, makes it quite expensive, besides the actual value of the water.

Q. 23. It is an expensive matter to prepare the land for the reception of the water, is it not?

A. We estimate it that that land will average about a 7-inch grade to the 100 yards. We put that at a cost of about $6.50 an acre to get the land in condition to put the water on. Of course, that means in condition that we can cover it all.

Cross-examination.

Mr. TREADWELL:

X Q. 1. How much land do you cultivate there?

A. I have nearly 100 acres at this time.

X Q. 2. How long have you been cultivating 100 acres there?

A. I don't know the exact year that the canal came down.

X Q. 3. Ever since the canal came there?

A. Yes sir.

X Q. 4. Irrigated the whole of it?

A. Yes sir.

X Q. 5. Every year except the two years that you missed?

A. I think I have irrigated most of it, though I have not all of it in alfalfa.

X Q. 6. How much of it have you in alfalfa?

A. I don't think I have over 40 acres at this time.

X Q. 7. But you have irrigated the other part as well?

732 A. Some years I have. I had it all in alfalfa once, but the alfalfa died out, and it was not profitable, and I quit irrigating it and just let it go.

X Q. 8. Then you have irrigated all that you care to irrigate every year?

A. Yes sir, except the two years.

X Q. 9. Excepting the two years you missed?

A. Yes sir.

Redirect examination.

Mr. STONESIFER:

R. D. Q. 1. You owned a considerable more land at one time?

A. Yes sir, I owned 200 acres at one time.

R. D. Q. 2. There is one question I should like to ask you, Mr. South: Is it possible for this water that irrigates this uncultivated land to be waste water from water-consumers above the land that is so irrigated?

A. No sir, I think not. There might be a little down near old

Hill's ferry. Mr. Miller has some cultivated land down there, and it might be, when he waters that, that he would let that water off of the cultivated land onto the uncultivated land; but there is not more than 2 or 3 miles that I should think that would be the case with, we will say 7 miles above Newman. I don't think that there is any waste water let out from there up as far as I have been lately on the uncultivated land.

R. D. Q. 3. As a matter of fact, Mr. South, the main settlement below this canal and the main water-consumers, are those
733 who live in the vicinity of Newman, are they not?

A. I don't really understand that question.

Mr. TREADWELL: Do you mean of the whole canal?

Mr. STONESIFER: No, I am speaking of the main settlement below this canal.

R. D. Q. 4. That is in the vicinity of Newman, is it not?

A. Yes sir.

R. D. Q. 5. There are other settlements?

A. There are, I think, more real settlements and more water used in our county than in Merced.

R. D. Q. 6. There is another settlement up near Los Banos, is there not?

A. Yes sir, there is a colony there.

R. D. Q. 7. There is another further up, about 14 or 15 miles, another settlement called the Dos Palos colony, is there not?

A. Yes sir.

R. D. Q. 8. Outside of those three settlements, the balance of the country is owned by Miller & Lux principally, is it not, below the canal?

A. Below the canal I think it is all owned by them, as far as I know.

R. D. Q. 9. What is the distance between Dos Palos colony and Los Banos?

A. The colony would be about 14 miles- -on an air line, I guess it would be about 17 miles.

R. D. Q. 10. There is a large body of this uncultivated land that is irrigated between those points?

A. Yes sir.

R. D. Q. 11. Now, then, above this land and the canal, this
734 land that is irrigated and the canal, there are no settlements at all, are there?

A. From what point?

R. D. Q. 12. We will say between the Santa Reita ranch and Los Banos, there are no settlements between there and the canal, are there?

A. There are just one or two farms, but owned by Mr. Miller. Just after you pass the Santa Reita ranch to the left, there are one or two farms in there.

R. D. Q. 13. And they are grain farms, are they?

A. Yes sir, I think so. There might be a little patch of alfalfa, but I did not see it. What I saw was grain.

R. D. Q. 14. Now, then, is it not the same way between Los Banos and the vicinity of Newman, that there is a large scope of country there that is not cultivated at all?

A. Yes sir, quite a number of acres.

R. D. Q. 15. It is a worthless country, is it not?

A. It is not worthless now. It was at one time. It is supporting a great many cattle now that I saw on it, and some very fine feed growing on it.

R. D. Q. 16. Who owns that?

A. Mr. Miller.

R. D. R. 17. You mean Miller & Lux, do you not?

A. Yes sir.

R. D. Q. 18. The largest body of this uncultivated land that is irrigated from the canal, lies between the Santa Reita ranch and Los Banos, does it not?

A. Yes sir; it is wider there from the river to the canal.

R. D. Q. 19. About how far is the canal at the point where this water comes out of it from the river?

A. Which water?

735–774 Mr. TREADWELL: That is what I wanted to ask, what your question means. I do not understand it.

Mr. STONESIFER:

R. D. Q. 20. How far is the point on the canal where this water comes out that irrigates that territory I am talking about, to the river?

A. The water begins to run out and irrigate that waste land above Dos Palos. I cannot state the exact distance from the river.

R. D. Q. 21. It is called camp 13, is it not, where it comes out?

A. It comes out above there. There is some water running out, perhaps 2 miles above there. There is a gate in the canal that lets water out on the waste land.

R. D. Q. 22. How far is it from that point on the canal, to the San Joaquin river?

A. It must be nine or ten miles.

(By consent, an adjournment was here taken until tomorrow, June 27, 1899, at 10 o'clock a. m.)

* * * * * * *

775 X Q. 26. Have you the agreement, Mr. Merritt, between Miller & Lux Company and the complainant with reference to waste water, that is referred to in the minutes of the trustees of the company, already in evidence?

A. I have. Here it is (producing).

Mr. STONESIFER: We will offer this in evidence.

(Marked "Respondents' Exhibit E.")

X Q. 27. Mr. Merritt, you stated in your previous cross-examination that the only charge for construction on the Tulare Lake canal

that you have been able to find, was the sum of $9026. Do you find that from any of the account books of the company?

A. I am not positive what you refer to. Do you refer to some amounts by Mr. Stangroom?

X Q. 28. Yes. You took those figures from the report of Mr. Stangroom, made in 1872. You do not find any such item, do you, in the account books of the company?

A. They are in the account books of the company in the sense that they were part of Mr. Stangroom's reports which were entered into the books, but they do not appeared segregated in the books of the company as charges against the Tulare Lake canal.

X Q. 29. It is, of course, charged up in the books, but it is not charged up against the Tulare Lake canal, is it? It is charged up in the construction account somewhere?

A. Yes sir.

X Q. 30. Does the construction account show any items that were for the construction of, or expenses incurred in the Tulare
776 Lake canal?

A. Will you repeat that question, please?

(The reporter reads the previous question.)

A. Do you mean to ask whether there is an account in the company's books showing the cost of the construction of the Tulare Lake canal, or whether there is any separate item in the San Joaquin Canal account which is evidently an item of construction in the Tulare Lake account. Those are two different things, and I do not know which you mean.

X Q. 31. The San Joaquin Canal account that you have mentioned there did not exist at this time, did it?

A. Not in that form. The elements that make the San Joaquin account up existed, as far as they had accrued at that time.

X Q. 32. Under the head of construction account?

A. Yes sir.

X Q. 33. But the San Joaquin Canal account by name did not at this time, in 1871, 1872 and 1873, appear upon the books of the company?

A. No sir. That was a later name.

X Q. 34. The construction account was carried on, and all items of construction proper were charged up in that account, up to a certain date, were they not? What is that date, if you remember?

A. I think I have it here. (After examining book.) On December 10, the construction account was transferred to the San Joaquin Canal account.

Mr. TREADWELL:

Q. Of what year?

A. 1877.

777 Mr. STONESIFER:

X Q. 35. So that the first appearance of the San Joaquin Canal account was in 1877?

A. Yes sir, as such.

X Q. 36. And up to that time all the proper items of construction appear in the construction account?

A. Or collateral accounts, that should be closed into that.

X Q. 37. As you have previously mentioned?

A. Yes sir.

X Q. 38. Is there any segregation of the expenses incurred in the Tulare Lake account from the expenses incurred in this canal from Los Banos to the dam?

A. Yes sir. There is a Tulare Lake Canal account, which was opened on May 26, 1875, and into that account, if I am not mistaken, there was carried something for work done previous to that date. But how far the secretary was successful in segregating the Tulare Lake Canal items from other items and putting them into this account, I do not know.

X Q. 39. That account was opened, then, in 1875?

A. Yes sir.

X Q. 40. As appears from the books?

A. Yes sir.

X Q. 41. Previous to that time does it appear from the books that there was any segregation of the accounts of the Tulare Lake canal from this San Joaquin canal, as we call it, that is, the canal from Los Banos to the dam?

A. No sir.

X Q. 42. Then where did you get this item of $9026 that you have testified to as having been spent on the Tulare Lake canal?

Mr. TREADWELL: He has already answered that question, both the other day and today.

778 A. From Mr. Stangroom's accounts.

Mr. STONESIFER:

X Q. 43. You do not take that from any books of account of the company?

Mr. TREADWELL: Define what the book is, and the witness might tell you.

A. Yes sir. I took it from the books of account of the company, and referring back for the original data which was necessarily contained in Mr. Stangroom's reports, I found the items segregated in that way.

Mr. STONESIFER:

X Q. 44. Read them to me from your books of account.

A. I cannot do that.

X Q. 45. You have just said that it does appear in the books of account.

A. Certainly they appear in the books of account, but not as segregated items.

X Q. 46. That is what I am trying to get at. You cannot segregate them.

A. I cannot from this book alone.

X Q. 47. There may have been ten thousand more, may there not?

A. The basis upon which these books were made up consisted of subsidiary books and of accounts rendered by the superintendent of construction. We did not bring them today, because we supposed that you had finished your examination upon that point.

X Q. 48. There may have been $10,000 more of expenditures, for all you know or all you can ascertain from the books of account, of that kind, properly chargeable to the Tulare Lake canal?

779 A. As I have previously stated, I have not been through the accounts item by item during the whole period of construction, and therefore it would be impossible for me to state what is not in that section of the accounts which I have not examined.

X Q. 49. Then, as I say, there may be many other items that you have not discovered?

A. There might be, if construction work was going on at that time. But my information and belief is that the construction in that region was not going on except during the periods which I have examined, and the amount which I have stated covered the entire amount in these books which does not appear segregated in the Tulare Lake Canal account.

X Q. 50. Was there not work going on there as late as 1875?

A. Yes sir, and at that date they had begun keeping a separate account to show it.

X Q. 51. And was there not work going on there from 1871 to 1875?

A. No sir.

X Q. 52. Are you sure of that?

A. I did not stay there to see, but I am very strong in my opinion that what I say is correct. I simply give it as my opinion. I can only state——

X Q. 53. You do not know anything about it?

A. I have no personal knowledge. I only tell you to the best of my knowledge and belief what appears to have been the case.

Mr. TREADWELL: This is hardly proper testimony. The books are before you, and if there is any item in them which refers to that, there it is. If it is not there, it is not, of course.

780 Mr. FULKERTH: I offer in evidence the entire report of Mr. Brereton, dated San Francisco, November 30, 1874. That is offered in connection with the minutes of the stockholders of December 1, 1874.

(Marked "Respondents' Exhibit F.")

Redirect examination.

Mr. TREADWELL:

R. D. Q. 1. You have stated, Mr. Merritt, that the amounts you have given us of balances of these various accounts, contain all the items referring to that matter which the books show at that date. Just explain what you mean by that.

A. I mean to say that at the date mentioned, the book made the showing which I gave. It would not necessarily follow, of course,

that the books at that date showed all of the charges that had accrued at that date.

R. D. Q. 2. In other words, there may have been, and undoubtedly were, other items of charges which had been incurred prior to that date, but which had not yet been reported so as to go on the books?

A. In the regular course of business, that must have been the case, because they did not report daily.

Recross-examination.

Mr. STONESIFER:

R. X Q. 1. You say there must have been. Please turn to those items and show them to us.

A. No sir.

781 R. X Q. 2. You say there must have been. Just show them to us.

Mr. TREADWELL: That question does not mean anything, of course. He says the books do not show. How can he give it?

A. If you will examine the entire set of books, you will find it as I have stated.

Mr. FULKERTH:

R. X Q. 3. Have you no way now of showing the expenses of the month commencing on the 21st day of January, 1873, and the month following?

A. I have shown you faithfully what the books show at that date. Whatever charges had accrued prior to that date, but which were not on the books at that date, could only be ascertained by an examination of all the accounts and the books for that period, so as to see what unreported charges may have been outstanding.

R. X Q. 4. The unreported charges that may have been outstanding would appear if you figured for another month, would they not?

A. Probably they would. A great many of them would. I would not be certain that they all would, however. It depends upon how careful they were in getting in all outstanding accounts.

R. X Q. 5. Would it be much trouble for you to show us what the expenses were in these various accounts?

A. Yes sir. That is a job for an expert, and I decline to do it.

Mr. TREADWELL: Excuse me, Mr. Merritt, but you do not understand the question, I think. He wants to know if you can give him the footings at the end of a month from that date.

782 A. I can make it at any date you like. I can give you the footings at any date you want. That is another matter altogether.

Mr. STONESIFER: As to the matter of the price that Mr. Miller paid for the Ward stock, as appears on page 72 of the transcript, Mr. Treadwell, you agreed to ascertain for us the amount that Mr. Miller paid for that stock. Will you now give us that information?

Mr. TREADWELL: I am informed that Mr. Miller paid $4 a share for it.

Mr. FULKERTH: Will you admit that he paid that for it?
Mr. TREADWELL: I will.

Mr. STONESIFER:

R. X Q. 6. That is your information, is it, Mr. Merritt?

Mr. TREADWELL: We object to the question. You have taken my admission. If you want to press the question, I will withdraw the admission. Mr. Merritt declined to answer the question before, and I have done this to save Mr. Merritt from going into confidential matters.

Mr. STONESIFER: We could have brought Mr. Miller here, of course.

Mr. TREADWELL: Yes, but that is not asking Mr. Merritt. Mr. Merritt is not called upon to give away the secrets of his other employers.

(It is understood that the stock was sold to Mr. Miller by Mr. Ward on the 19th of February, 1897.)

Mr. STONESIFER:

783 R. X Q. 7. As far as you know, Mr. Merritt, was the value of the stock about the same in 1896 as it was in 1897?

Mr. TREADWELL: We object to that upon the ground that there has been no proper foundation laid. The testimony of this witness shows that he has no acquaintance with the value of the stock, and it is therefore not competent for him to testify upon that question.

A. I am not informed upon the matters of the value of the stock.

Mr. STONESIFER:

R. X Q. 8. As secretary of the company, you have no information about that?

A. No sir; the secretary of the company has nothing to do with the market value of the stock.

R. X Q. 9. Has he any information about the actual value of it?

A. If by "actual value," you mean how much each share of stock would be worth on the basis of what the property cost, then the secretary would know.

R. X Q. 10. I did not ask you that.

A. Each share of stock represents a certain proportion of ownership in the property of the company. The secretary knows what property the company has. But as to the price that might be obtained for a share of stock on the market, the secretary has no information.

Mr. TREADWELL: In connection with my admission as to the price that Mr. Miller paid for the stock, I desire to make an objection to it that it is irrelevant and immaterial, and that the value of the stock cannot be proved by the price paid at a particular
784 sale. This ought to have been stated at the time, but I suppose counsel will have no objection to my making it now.

Mr. FULKERTH: We now offer in evidence the proceedings before the board of supervisors, showing what transpired at and prior to the time that the board fixed the rates which is complained of by this complainant. This is the record made by the reporter at that time. It consists of two volumes, volume I and volume II.

(Marked "Respondents' Exhibits G–1 and G–2.")

This is introduced for the purpose of showing the proceedings taken by the board of supervisors in fixing the rates of the complainant company, being the rates complained of by that company in this suit.

Mr. TREADWELL: We consent that if it should be hereafter ascertained that any of the proceedings of the board of supervisors, or before the board of supervisors, in the matter referred to, are not contained in the volumes marked "Respondents' Exhibits G-1 and G–2," the respondents may supply the same otherwise.

Mr. STONESIFER: We admit the allegations of the bill, that the complainant has appropriated the waters of the San Joaquin river to the capacity of its canal, for the purpose of sale, rental and distribution on the line of the canal, and we withdraw from our answer the following: "That the said San Joaquin river is and at all times
"mentioned in complainant's bill of complaint was a navi-
785 "gable stream and a public way from its mouth to Syc-
"amore point, and that said point of diversion by complain-
"ant lies between the mouth of said river and Sycamore point;
"that no amount of water in said river could ever be appropriated
"by complainant that would impair its navigability; that the water
"now taken by complainant, and which has been taken by com-
"plainant for more than ten years last past, has impaired the navi-
"gation of said river and at times has prevented all navigation
"therein; that to the extent in which complainant does now and
"has heretofore impaired or impeded the navigation of said river
"by diverting the waters thereof into its said canal, it cannot exer-
"cise any right to appropriate any of the waters in said river or di-
"vert the same for any purpose at said point of diversion."

The allegation which we withdraw is found commencing on page 3, about the middle of the page, and ending on page 4.

We also withdraw the following denial: "These defendants deny
"that complainant is or ever was the owner of any right of appro-
"priation as alleged in the bill of complaint or otherwise, or that
"the same was acquired more than twenty years ago, or at any other
"time, or that the said alleged right of appropriation is necessary
"to enable complainant to supply waters to its said customers or
"consumers in said counties, or that without said alleged right of
"appropriation or the waters obtained thereunder, it would be un-
"able to furnish said water to its customers or consumers thereof,
"or that there is no other supply obtainable wherewith to supply
"such needs."

786 That is to be found on pages 4 and 5.

Mr. TREADWELL: Let this go in in that connection: The complainant now withdraws that allegation of the bill of complaint,

being the last paragraph of the second subdivision of said bill, and found on page 4 thereof, in the following words:

Said right of appropriation was at all of the times herein mentioned and now is of the reasonable worth, and of the fair value of $500,000.

Mr. STONESIFER: That is the case on behalf of the respondents.

787 Mr. TREADWELL: It is admitted by all parties that F. L. Palmer, a witness for complainant, residing at North Pomona, Los Angeles county, California, would, if present, testify, and shall be considered as having testified, on behalf of complainant, as follows:

I was the secretary of the complainant corporation from the 1st day of March, 1874, to the 30th day of June, 1883. While I was such secretary, I correctly entered the minutes of the proceedings of the board of trustees and of the stockholders of said corporation. While I was such secretary, I kept the books of account of said corporation, and kept said accounts correctly, and made full, true and correct entries of all the financial transactions of said corporation. Every readjustment which I made of the construction account of said corporation, I made in accordance with correct data then officially in my possession as such secretary, and such readjustments were correctly made by me in accordance with said data.

It is further agreed by and between the parties that B. G. Chandos, a witness on the part of the complainant, residing at Babcock, Wood county, Wisconsin, would, if present, testify, and shall be considered as having testified on behalf of the complainant as follows:

I was the superintendent of the complainant corporation from and including January, 1874, to and including October, 1874. While I was such superintendent, I rendered monthly statements to the secretary of said corporation of my financial transactions as such superintendent. Each and all of the statements rendered

788 by me to the secretary of said corporation of my financial transactions as such superintendent were correct, and contained full, true and correct entries of all moneys received or disbursed by me, and the source of each receipt, and the purposes for which such disbursements were made.

It is further agreed between the parties that R. M. Brereton, a witness for complainant, residing at Woodstock, Multnomah county, Oregon, would, if present, testify, and is to be considered as having testified on behalf of complainant as follows:

I was the chief engineer and general manager of the complainant corporation for a certain period, the precise date of which I do not now remember; and from the 15th day of October, 1874, to the 21st day of January, 1875, while I was such chief engineer and general manager, I acted as superintendent.

During the period last mentioned, I rendered monthly statements to the secretary of said corporation of my financial transactions as such chief engineer and general manager. Each and all of said statements were correct, and contained full, true and correct entries

of all moneys received or disbursed by me, and the source of each receipt, and the purposes for which such disbursements were made.

It is also agreed between the parties that George S. Hoffman, a witness for complainant, residing at Santa Barbara, Santa Barbara county, California, would, if present, testify, and is to be
789 considered as having testified on behalf of complainant as follows:

I was assistant superintendent, and as such acting as superintendent of complainant corporation, from the 10th day of December, 1877, to the 31st day of December, 1877. During that period I rendered monthly statements to the secretary of said corporation of my financial transactions as such assistant superintendent. Each and all of said statements were correct, and contained full, true and correct entries of all moneys received or disbursed by me, and the source of each receipt, and the purpose for which such disbursements were made.

Mr. FULKERTH: It is understood we do not admit that the items of expenses reported by these different parties mentioned, were proper items of expense.

Mr. TREADWELL: You do not admit anything, except that they would so testify.

Mr. FULKERTH: They simply testify that they made the reports of the different expenses. We do not admit that the expenditures were properly made.

Mr. TREADWELL: Certainly. You are not expected to.

(It is stipulated between the parties that either party may at any time withdraw any exhibits belonging to such party, and which has been copied by the reporter, and also that the respondents may withdraw the volumes constituting "Respondents' Exhibit G," upon such party giving a receipt therefor to the examiner.)

790 (By consent, a continuance was here taken subject to notice.)

791 TUESDAY, *September* 12, 1899.

Counsel appearing: For complainant, W. B. Treadwell, Esq. For respondents, C. A. Stonesifer, Esq., and L. W. Fulkerth, Esq.

A. A. MAYES, called for the complainant in rebuttal, sworn.

Mr. TREADWELL:

Q. 1. What is your name?
A. Archie Alexander Mayes.
Q. 2. What is your age?
A. About 51 years old.
Q. 3. Where do you reside?
A. I reside near Crow's Landing, San Joaquin county.
Q. 4. How long have you resided there?
A. Since 1869.
Q. 5. What is your business?
A. I have an alfalfa ranch.

Q. 6. How long have you been engaged in the business of farming?

A. Four years.

Q. 7. All the time in Stanislaus county?

A. No sir, I have not been all the time in Stanislaus county; a few years in San Joaquin county, but most of the time since 1869 I have been in Stanislaus county.

Q. 8. When you say you have been farming for four years, do you mean you did not do any farming before that time?

792 A. I did not.

Q. 9. I understand you to say you have been engaged in the cultivation of alfalfa where you now live?

A. Yes sir.

Q. 10. Is your land irrigated from the ditch of the complainant company?

A. Yes sir.

Q. 11. Are you generally acquainted with the raising of alfalfa?

A. Well, I have had four years' experience of it.

Q. 12. You have also observed your neighbors, to some extent?

A. Well, to some extent; not very much, so.

Q. 13. After a crop of alfalfa has been put in and started, how long will it last before it requires reseeding with abundant irrigation?

A. That I could not answer.

Q. 14. How long do you know it will last?

A. I don't know how long it will last, because I have had only the four years' experience with it.

Q. 15. It will last that long?

A. Yes sir, it will last that long.

Q. 16. What is the average cost per acre of putting in a crop of alfalfa? By "putting in," I include the preparation of the land, the checking up for irrigation, the purchase of the seed, and putting it in, and so forth.

A. I am sure I could not answer that question properly, because I bought my land already seeded, and I have had no experience whatever.

Q. 17. You have never seeded any?

A. But very little.

Q. 18. Not enough to form an opinion upon that subject?

A. No sir, I could not say what it would cost.

Q. 19. What expenses are there in the keeping up of alfalfa

793 after it has once been seeded, outside of irrigation?

A. That is a question I could not answer.

Q. 20. I do not ask how much. What expenses are there? What have you to do to keep up a crop of alfalfa? What work has to be done on it after it has been seeded?

A. The checks have to be kept up, and the ditches kept in repair, and the boxes. There is more or less wear to the boxes.

Q. 21. Anything else?

A. Of course, it drowns out. You have got to recultivate and resow, and so forth.

Q. 22. How much has it cost you per acre to do that work per year, on an average?

A. I have a statement of what the proceeds are, and what the expenses are.

Q. 23. Tell us what those expenses are. You can refresh your memory by any statement you have.

A. My memory is not good enough to go over that without making a note of it.

Mr. FULKERTH: I understand this simply applies to Mr. May's expenses; what he has done.

Mr. TREADWELL: That is all it is now.

Q. 24. At present, simply with regard to the expenses.

A. Well, I have to give you what the proceeds are, first.

Q. 25. I do not want the proceeds now. I want the expenses.

A. Well, the expenses on 68 acres of land, for four years, were $2618.

Q. 26. What are the items for that?

794 A. I could not give you that.

Q. 27. How did you get that statement?

A. I took them from a book. I have not the book with me.

Q. 28. Does not the book show the items?

A. My bills, lumber bills, and expenses of equipping the ranch, show it. That is what I have taken this from.

Q. 29. You could not give the items from your memory?

A. I could not, not for four years, to go back over from $15 worth of lumber up to $60—I could not do it.

Q. 30. Does that include simply the money that you paid out, that $2000?

A. This $2618 are the expenses of running this ranch.

Q. 31. Was that simply the money that you paid out?

A. Yes sir.

Q. 32. It does not include anything for your own wages?

A. Yes sir, it includes my wages, but it does not include any equipment for this ranch. It is simply wages, water bills and interest.

Q. 33. I want to know what you have paid out, and not any allowance of wages for yourself. How much of that did you include wages for yourself?

A. I have done all that myself, and that is where I have——

Q. 34. I want to separate that. How much have you allowed yourself for wages in that estimate?

A. I have allowed myself $40 a month.

Q. 35. That would be a fair rate of wages if you had to hire it done?

A. I have allowed $30 for myself, and $10 for boarding. I believe they claim $15 for boarding a man.

795 Q. 36. How much do you have to pay to men to do that kind of work? What rate of wages?

A. I don't think I could get men for less than $45.

Q. 37. $45 in money?

A. $45 in money, and boarding him besides.

Q. 38. Have you ever paid that high?

A. Yes sir.

Q. 39. What crop can be taken off a field of alfalfa, on the average?

A. I could not tell you that, because I never cut any of mine.

Q. 40. What have you done—pastured it?

A. I pastured it.

Q. 41. With what kind of stock have you pastured it?

A. Horses—stock.

Q. 42. How many head of stock have you kept, on the average, during that period of four years, on this land?

A. It varies. About five months of the year I keep about one-half.

Q. 43. That is, you mean one-half head per acre?

A. Yes sir.

Q. 44. The rest of the time?

A. The rest of the time I keep—I cannot say that I keep any. That is a hard question to answer, but I don't think I could keep one head.

Q. 45. You mean during the remaining seven months, or all the time?

A. The remaining seven months. I don't know I could keep one head. I don't think I could. I have not been doing it.

Q. 46. Have you irrigated your land constantly and regularly?

A. Yes sir.

796 Q. 47. Every year?

A. Yes, sir.

Q. 48. You never have cut any hay?

A. Just a little for my own use. I never cut any alfalfa for the market.

Q. 49. Is the whole of this 60 acres of land in alfalfa?

A. No sir; there are two acres that are not in alfalfa.

Q. 50. All the rest is?

A. Yes sir.

Q. 51. You were one of the gentlemen who signed the petition to the supervisors of Stanislaus county, to fix the rates in controversy in this case?

A. Yes sir.

Cross-examination.

Mr. STONESIFER:

X Q. 1. Mr. May, when did you buy your land?

A. I bought my land four years ago this coming December—the 5th of December.

X Q. 2. How much an acre did you pay for it?

Mr. TREADWELL: I object to the question as not being cross-examination.

Mr. FULKERTH: We want to show the whole thing. The idea is

to prove this man has made money during his farming experience——

Mr. TREADWELL: We have not said anything about that he has made money. I object to the question upon the ground that it is not cross-examination.

Mr. STONESIFER: You asked him about the expenses.

Mr. FULKERTH: We have the right to figure the interest on the cost.

Mr. TREADWELL: There is no need to discuss it.

797 Mr. STONESIFER:

X Q. 3. What did you pay for it, Mr. Mayes?

A. I paid $50 for 50 acres.

Mr. FULKERTH:

X Q. 4. That is, $50 per acre?

A. Yes sir, per acre. 18 acres I paid $45 for.

Mr. STONESIFER:

X Q. 5. Four years ago?

A. Four years ago.

X Q. 6. How much was the whole purchase price?

A. The whole purchase price was $3310.

X Q. 7. The money was invested in that real estate. Where was it at the time that you invested it there?

A. I had it loaned.

X Q. 8. Loaned out?

A. Yes sir.

X Q. 9. At what rate of interest?

A. I was getting 7 per cent.

X Q. 10. You say that the land was in alfalfa when you bought it—50 acres of it?

A. Yes sir, 50 acres were in alfalfa.

X Q. 11. Have you managed it economically?

A. I have managed it myself as economically as it could be done.

X Q. 12. You have done all the labor yourself?

A. Just except a very little, doing some work that I could not do myself.

X Q. 13. The bulk of it you have done yourself?

A. The bulk of it I have done myself.

X Q. 14. Has it been hard labor, that is, constant labor?

A. Yes sir, I have been constantly at it night and day.

X Q. 15. It is work that requires a man to be industrious
798 at, does it not?

A. Yes sir, it is; it requires a man to be very industrious.

X Q. 16. You say that you have been at it night and day?

A. A good deal of the time. When I would get water late in the evening, it would be two nights before I would get through with it.

X Q. 17. You would irrigate all night?

A. Yes sir.

X Q. 18. That is your custom and the custom of the neighborhood, that they never let up until the land is irrigated?

A. When we turn the water on our land, we are supposed to keep it running until we finish the field.

X Q. 19. And you work all night to do it?

A. Yes sir.

X Q. 20. From your experience there, Mr. Mayes, as compared with the way that your money was invested before you bought this property, have you made any more money since you have been on this land than you did before?

Mr. TREADWELL: I object to the question as not cross-examination. That is a conclusion, and not a statement of facts. I do not object to the witness stating any facts. I simply examined him as to the expenses of the cultivation of alfalfa after the pasturage upon it.

A. I have not.

Mr. STONESIFER:

X Q. 21. Have you kept account since you have been on the land?

A. Yes sir, of the income.

X Q. 22. And of your expenses?

A. Yes sir.

X Q. 23. Now, what has been your income since you have been on this land?

799 Mr. TREADWELL: I make the same objection, that it is not cross-examination, and the further objection that the witness testifies that he kept accounts, but does not remember them, and has not got them with him.

Mr. STONESIFER:

X Q. 24. Have you got it on that piece of paper (pointing)?

A. I have the accounts.

Mr. TREADWELL: He testifies he has not got the accounts, but simply the sum total.

Mr. STONESIFER:

X Q. 25. That is the same paper you testified from on direct examination?

A. Yes sir.

X Q. 26. Have you got a statement of it on that account?

A. Yes, sir, taken from the books.

X Q. 27. That is the same paper that you used on direct examination?

A. Yes sir.

X Q. 28. What is it?

Mr. TREADWELL: I object. The witness testified he has not got the items that make up those sum totals; that those items — on his books, which are not here produced.

Mr. FULKERTH: He is your witness.

Mr. TREADWELL: It does not make any difference when you go outside.

A. I have taken in $2948.54 against $2618.

Mr. STONESIFER:

X Q. 29. That is, in four years?

A. Yes sir, that is in four years, against $2618.

X Q. 30. Expenses.

A. Yes sir; that is, the expenses of running this ranch. I have not put in the expenses of equipping it; that I have not
800 put in.

X Q. 31. Have you included in the cost, the interest on your money invested?

A. I have.

X Q. 32. In this $2948?

A. Yes sir.

X Q. 33. How much is that?

A. I will state, to be fair, that I figured my interest at 8 %, but I should have figured it at 7 %, and there would be a difference of from 7 to 8 % on the $3310. That would be the difference.

Mr. FULKERTH:

X Q. 34. About $120?

A. Yes sir.

Mr. STONESIFER:

X Q. 35. What is that difference so that we can get it in the record?

A. You can figure that.

Mr. TREADWELL: Any one can compute that.

Mr. STONESIFER:

X Q. 36. About $123.

Mr. TREADWELL: Do not let us take up time in making computations that any one can make.

Mr. FULKERTH: It is about $123.

Mr. STONESIFER:

X Q. 37. Have you included your taxes?

A. Yes sir.

X Q. 38. And your water bill?

A. And my water bill.

X Q. 39. Is that down on that statement?

A. It includes my water bill at $1.50, what I have been out.

X Q. 40. Let me see that statement.

A. I do not know whether you can understand this (handing statement to counsel).

801 X Q. 41. Your investment is more than the cost of the ranch?

A. My equipment amounts to some seven hundred dollars and odd. Added to that, it makes some $4000 and over.

X Q. 42. That you have put into this property?

A. Yes sir.

X Q. 43. From that your yearly income has been $737.13?

A. My yearly income? Does it say income there?

X Q. 44. You have got it for four years.

A. I have made an average of it, what it is a year. My income has been $737.13.

X Q. 45. And your yearly expenses?

A. $634.50.

Mr. FULKERTH:

X Q. 46. What is the amount of your equipments?

A. $746.50.

Mr. STONESIFER:

X Q. 47. That is for what?

A. For boxes, fences, windmill, well, buildings to live in.

X Q. 48. They were necessary equipments, were they?

A. Yes, sir, I had to have them in order to run the ranch. Excuse me. I have the items of those expenses.

Mr. TREADWELL: All right. I will give you a chance to give them, then. Wait a moment until these gentlemen are through.

Mr. STONESIFER:

X Q. 49. Have you included in that cost there, your taxes?

A. Yes sir.

Mr. TREADWELL: He has already said that he had.

Mr. STONESIFER:

X Q. 50. And your water bill?

A. Yes sir, $1.50.

X Q. 51. At $1.50?

A. Yes sir.

X Q. 52. If it had been a $2.50 rate, how much more would it have been?

802 Mr. TREADWELL: I object to that question. That is a matter of computation. Some of these gentlemen are very busy and want to get home. I hope counsel will not take up time by asking such questions.

Mr. STONESIFER: Our side proposes to take all the time necessary to cross-examine.

Mr. TREADWELL: I object, upon the ground that it is not necessary to have the witnesses make computations, which counsel can make for themselves.

Mr. STONESIFER: You are persistently trying to cut us off.

Mr. TREADWELL: Only from taking up time in making the witness make computations.

A. What is the question?

Mr. STONESIFER:

X Q. 53. Read the question, Mr. Reporter.

(The reporter reads the question as follows: "If it had been a $2.50 rate, how much more would it have been?")

— Q. 54. How much more would your expenses have been?

A. My expenses would have been four times $59. It would have been $59 more a year.

X Q. 55. As it is now, you have a profit of $330 to your credit at a $1.50 rate on your property there in the four years?

Mr. TREADWELL: I object. It is a mere matter of computation. The witness has stated the figures.

Mr. STONESIFER:

X Q. 56. I would rather have the witness compute it than myself. You have a profit in the four years of $330?

A. Yes sir.

803 X Q. 57. That you have made?

A. Yes sir.

X Q. 58. And if you paid the $2.50 rate, it would have been $253 less than that?

A. Yes sir.

X Q. 59. Then, on a farm of 68 acres, you would have had a profit, if you were paying $2.50 an acre for water, on the four years, of $97?

Mr. TREADWELL: I object. That is a matter of computation.

A. Yes sir, I should have had that profit.

Mr. STONESIFER:

X Q. 60. That is not figuring your equipments, which cost you seven hundred dollars and odd?

A. I don't understand the question.

X Q. 61. This computation that we have made here does not include your equipments that you have put on the ranch?

A. No sir.

Redirect examination.

Mr. TREADWELL:

R. D. Q. 1. I understand you to say that in this amount of $2618 expenses, you have included 8 % per annum on $3310?

A. I did—8 %.

R. D. Q. 2. How many acres do you pay for irrigating?

A. Up to date I have not paid for the full 68 acres. It was not all in alfalfa. I paid on 59.

R. D. Q. 3. That is what I gathered. I was not quite sure.

804 NICHOLAS BIBBY, called for the complainant in rebuttal, sworn.

Mr. TREADWELL:

Q. 1. What is your full name?
A. Nicholas Bibby.
Q. 2. What is your age?
A. 67 or thereabouts.
Q. 3. Where do you reside?
A. Near the town of Volta, in Merced county.
Q. 4. How long have you lived there?
A. In that neighborhood I have lived about 31 years.
Q. 5. What is your business?
A. Farming.
Q. 6. How long have you been engaged in business in that vicinity?
A. For that amount of time that I have stated, about.
Q. 7. Is your land, or any of it, irrigated from the canal of the complainant company?
A. Some of it.
Q. 8. How much land do you irrigate?
A. You would have to give me time to make a little estimate—in the neighborhood of 50 acres.
Q. 9. Do you raise any alfalfa?
A. I do.
Q. 10. About how many acres?
A. Somewhere in the neighborhood of 47 or 48 acres.
Q. 11. How long have you been engaged in the cultivation of alfalfa?
A. Ever since the canal started, more or less.
Q. 12. Have you during that time observed the cultivation of alfalfa by others in your neighborhood?
A. Well, yes, to a certain extent.
805 Q. 13. How long will a stand of alfalfa last without reseeding, assuming it has abundant irrigation?
A. You will have to ask some one older than me.
Q. 14. You have found your stand last as long as you have been there?
A. Yes sir.
Q. 15. And kept in good condition?
A. And kept in good condition, yes, where I used it principally for hay.
Q. 16. What is the cost of putting a piece of land into alfalfa, including all items of cost?
A. I cannot answer the question, for I keep no account of it.
Q. 17. From your general experience?
A. It would be a pretty hard matter to say. I don't hire but a very little help. Myself and my sons do the principal work—principally all of it.
Q. 18. From your general experience as a farmer, cannot you tell,

for example, about how much it would cost to plow, level and check up the land per acre?

A. I would not like to put it over $5.

Q. 19. You think that would be a fair amount?

A. I could not possibly tell exactly. I don't think it would cost me more than that.

Q. 20. How much would it cost to seed, harrow, and so forth?

A. I estimate the whole thing.

Q. 21. The whole cost you put in at $5 per acre?

A. Yes sir.

Q. 22. Does that include putting in the boxes for irrigation?

806 A. I don't use boxes. I use a piece of canvas for a dam, cut a hole in the levee, or a check we sometimes call it—cut a hole and use a piece of canvas.

Q. 23. When you get through with that hole, you close it up again?

A. No sir, I leave it there ready for the next time, and take my canvas dam and take it to another levee or check, and leave it there. Boxes are a good deal in the way.

Q. 24. On an average, how much hay can you cut from a field of alfalfa, which is properly irrigated, in a year?

A. In good land, I can cut nine tons.

Q. 25. On average land; not the best land or the poorest land, but the average land?

A. We don't aim to put it on poor land; at least, I don't.

Q. 26. People generally do not, do they?

A. No sir; some lands have not produced in my neighborhood alfalfa of any consideration.

Q. 27. You think that nine tons to the acre would be a fair average?

A. It is with me—under an average.

Q. 28. Under an average?

A. Yes sir.

Q. 29. What can you sell that hay for, on an average, in the field?

A. I never sold any in the field.

Q. 30. Then state what the cost of cutting and stacking would be.

A. The cost of cutting and stacking, according to my estimation, would be about 87½ cents.

Q. 31. Per acre?

A. Per ton.

Q. 32. Per ton?

A. Yes sir.

Q. 33. How much will that hay sell for in the stack?

807 A. I have not sold any until this year for less than $7. This year I have bargained a stack estimated at 2100 tons for $4. It is only bargained for. It is not sold. The gentleman that wanted it said that he did not have the money at the time. That was only last week.

Q. 34. Prior to this year, you say it has been at least $7?

A. Last year hay was worth in the neighborhood, in the stack or

out of the barn, whichever you sold it from, $10 per ton. I don't sell much hay. I feed it generally to my own stock.

Q. 35. You are in the habit, then, of feeding your hay to your own stock, and selling your stock?

A. Yes sir.

Q. 36. Feeding stock on the hay cut from the land, how many head of stock can you keep per acre of alfalfa?

A. I cannot give you a correct answer on that, because I have got other land that I run my stock on, and sometimes, when I happen to have some beef cattle, or mutton sheep, or the like, I feed them in the winter time, in order to keep them up, looking for a higher price for them.

Q. 37. After you have cut your last crop of hay, is there not a period of the year during which you pasture the alfalfa?

A. Yes, sir, this year I have already cut three acres. I can cut another, but the probability is that I will pasture it.

Q. 38. On an average, about how long do you pasture your alfalfa?

A. I can pasture it from now until frost comes and kills it, or as long as there is any pasture on the ground.

Q. 39. About how long is there in the year that you cannot pasture?

808 A. There is no time in the year until it gets very wet. I do not put stock on my alfalfa ground when it is very wet.

Q. 40. Because it injures the ground?

A. Because it injures the ground and it injures the alfalfa.

Cross-examination.

Mr. STONESIFER:

X Q. 1. How long have you been farming there?

A. I have been farming in the neighborhood for some thirty years.

X Q. 2. Thirty years?

A. Thereabouts.

X Q. 3. At this place?

A. In the neighborhood, I say. I have owned the place at least for 29 years that I live on, but I did not always live on it. When I could see better than now, I used to blacksmith.

X Q. 4. How much land have you there?

A. I have got about 650 acres.

X Q. 5. Do you cultivate it all?

A. No sir, it is not all fit to cultivate.

X Q. 6. About how much do you cultivate?

A. It varies—the number of acres varies. Sometimes I cultivate more, and sometimes less. I put in, outside of irrigation last year, somewhere in the neighborhood of 70 or 80 in grain, but I did not get anything from it.

X Q. 7. You have irrigated, then, as I understand you, about 47 acres?

A. About that—this year. Sometimes it varies—not much. It

does not vary much in the last four or five years, what I have irrigated.

809 X Q. 8. Have you made money off of the land that you have irrigated?

A. I think I have.

X Q. 9. When did the ditch come out there—this canal?

A. About 1873.

X Q. 10. At Volta?

A. No sir, not at Volta. I used to irrigate before it came down as far as there. I don't know that I understood your question clearly.

X Q. 11. I understand you to say you live at Volta.

A. Near Volta, I said.

X Q. 12. When did the ditch come through there?

A. I don't remember.

X Q. 13. About the year 1878, was it not?

A. I don't remember what year it came through Volta, or by Volta. It does not come through Volta. Volta is a little town, and the canal is at least a mile and a half from there.

X Q. 14. You were living there at that time?

A. I was living in the neighborhood, I said.

X Q. 15. Not where you are now?

A. No sir. I owned the place for about twenty-nine years.

X Q. 16. The place you are on now?

A. The place I am on now.

X Q. 17. That you are cultivating to alfalfa?

A. Yes sir, some of it. The road is between. I raise alfalfa on both sides of the road, the side I live on and the opposite side.

X Q. 18. How much is your land worth there?

A. How do you want me to estimate it? By the price I gave?

810 X Q. 19. What is your land worth now?

A. I never offered it for sale.

X Q. 20. What is it worth?

A. That I cannot tell, only by reference to some of my neighbors that offered to sell.

X Q. 21. From that what is it worth?

A. Mr. Wood has asked $125 an acre for some—for some of his land that adjoins mine.

X Q. 22. $125 an acre?

A. He never told me so, but I heard him tell another gentleman that he could have a certain piece of land for $125 an acre. That was before there was any alfalfa. That same piece of land has got alfalfa now.

X Q. 23. I understand you to say you do not stock your land.

A. Not alfalfa land; only between cuttings; while it is dry; between the time of cutting and fall, before the rains.

X Q. 24. You work it entirely for hay?

A. Principally. I pasture a little. I pasture some for my milch cows, hogs, sheep, calves, and such light stock; but the hay ground I do not pasture only between cuttings, and after I am done cutting. The probability is that I will pasture from now until the feed stops

growing and it is devoured by stock. It does not grow in very cold weather.

X Q. 25. Have you invested in any real estate, or any other property, since you have been there in the last twenty-nine years?

A. I have added to my place.

X Q. 26. To this place?

A. Yes sir.

X Q. 27. And the money that you had, did you make out
811 of this 47 acres?

A. I don't keep an account of what I make off of this 47 acres. *I simply stated that I had about that amount of ground in* alfalfa.

X Q. 28. When did you put this into alfalfa?

A. I put in some quite a number of years ago. I don't know how long.

X Q. 29. Give it us as near as you recollect.

A. Some I put in this last spring.

X Q. 30. How much last spring?

A. 16 acres and 7 acres.

Mr. TREADWELL: That would be 23 acres.

A. That is about the amount I put in last spring. That did not all grow. I had to irrigate it up. Where the land was low, the water lay on it too long and rotted the seed.

Mr. STONESIFER:

X Q. 31. Now, then, before last year, you only had in 24 acres.

A. It varies. Sometimes I plow it up, if I want to raise something else. I have got some potato land.

X Q. 32. Have you plowed up some of your alfalfa?

A. Yes sir.

X Q. 33. This that yields nine tons to the acre?

A. Yes sir.

X Q. 34. What did you put that kind of land into?

A. I put it into Egyptian corn sometimes, and potatoes.

X Q. 35. Does that pay more than alfalfa does, nine tons to the acre?

A. Yes sir. I have made as much as $75 to the acre in a
812 year on Egyptian corn and potatoes.

X Q. 36. How many acres did you have in of that kind?

A. I cannot tell.

X Q. 37. Would it be one acre?

A. Yes sir, more than one acre.

X Q. 38. Ten acres?

A. No sir, not ten.

X Q. 39. Three?

A. I had over ten acres of Egyptian corn in at one time.

X Q. 40. On the average, before last year, how much of this land have you had in alfalfa?

A. I have had 30 acres, I think, on an average.

X Q. 41. 30 acres on an average, for the last 29 years?

A. No sir, not for 29 years.

X Q. 42. I understood you to say you have been there for 29 years?

A. I have lived there 29 years. In that neighborhood I have lived 31 years.

X Q. 43. How long have you had it in alfalfa?

A. I cannot answer the question.

X Q. 44. How long with reference to the time that the ditch came through there?

A. I have had alfalfa before the ditch came by there, because we flumed, or my neighbors did, before the ditch came along, across the Los Banos creek. We flumed the creek, and brought water across there, and I had small pieces of alfalfa.

X Q. 45. That is, before the ditch was extended?

A. That was before the extension.

X Q. 46. Did you then have 30 acres?

A. No sir, not in alfalfa.

813 X Q. 47. You told me you had on the average 30 acres in alfalfa before last year. What I want to get at is, how many years have you been cultivating this 30 acres to alfalfa, or irrigating it?

A. I cannot answer that.

X Q. 48. Has it been 20 years?

A. I don't think it has.

X Q. 49. 10 years?

A. I cannot say positively.

X Q. 50. 15 years?

A. I cannot positively say the number of years.

X Q. 51. Do you remember the year 1878?

A. I remember it.

X Q. 52. Do you remember when the ditch was extended from Los Banos to the Orestimba?

A. I remember the circumstance, but I don't remember the date.

X Q. 53. That was in the year 1878. With reference to that time, when did you put in your alfalfa—this 30 acres?

A. I put in alfalfa occasionally every two or three years.

X Q. 54. Then would you plow it up?

A. Sometimes I could.

X Q. 55. You said you had on an average 30 acres during all that period.

Mr. TREADWELL: He did not say he had.

Mr. STONESIFER: I want to find out.

A. In different pieces, I presume I had.

X Q. 56. Give us, as near as you can, the number of years that you had this 30 acres in alfalfa, and we will drop that subject.

A. I will say 12 years.

814 X Q. 57. 12 years?

A. Yes sir. Sometimes, perhaps, I did not have all the 30 acres in. I would sometimes plow up. It varied a good deal on account of the amount of stock I was feeding.

X Q. 58. Is your property mortgaged?

A. No sir.

X Q. 59. Has it ever been?

A. No sir, it never has been.

X Q. 60. You say you do all of your own work?

A. Principally. I did not say I did it all.

X Q. 61. What other business are you engaged in there besides this 30 acres of alfalfa?

A. I farm the same, as any other farmer would; mixed husbandry, as it is termed.

X Q. 62. That is, you farm for wheat?

A. For wheat and barley.

X Q. 63. What has been your profit in the last 20 years?

A. That I could not give.

X Q. 64. Could you not tell from your business?

A. No sir, I could not make any estimate of it. I don't hoard up money, and don't loan it.

X Q. 65. Twenty years ago, what property did you have?

A. Twenty years ago?

X Q. 66. Yes—I will say 12 years ago—that will be closer to you.

A. Let me have a piece of paper. I am confident I had 360 acres of land, and perhaps more, but I cannot remember the dates.

X Q. 67. 12 years ago?

A. Yes sir.

X Q. 68. How much have you got now?

815 A. I have got somewhere in the neighborhood of 650.

X Q. 69. That is 290 acres more than you had 12 years ago?

A. I don't know how much.

X Q. 70. How much did you pay for that land, this 290 acres, 12 years ago?

A. I am pretty confident I had that much 12 years ago. In the first place, I took up in 1869 Government land, 160 acres. I think a year or two after that I bought another 160 acres, which is the quarter section I now live on, and from Mr. Tim. Paige I bought 160 acres, I think it must be, 16 years ago.

X Q. 71. I did not understand you, then. I understood you to say you took up 160 acres?

A. Yes sir.

X Q. 72. Then you bought another 160 from Tim. Paige?

A. Yes sir.

X Q. 73. That would make 480.

A. Would it?

X Q. 74. If you bought 160 acres 16 years ago from Tim. Paige——

A. I think it is all of 16 years.

X Q. 75. That would be 480 that you had 16 years ago?

A. I would not positively swear to it, but I think it is all of that time. I remember I was coming down, and met him in Merced early in the morning, and I made him an offer as I was coming down out of my room. He was standing in the office, and before I got off the stairs I made him an offer for it, and he said he would consider it.

X Q. 76. How much have you bought in the last 12 years?

A. In the last 12 years I bought a quarter section from Mr. Wood, that is, it is not a full quarter, it is a fractional half section, section 31.

816 X Q. 77. How much land is there in it?

A. I don't know quite positively. It is very near a full quarter. It lacks a few acres.

X Q. 78. 150 acres?

A. Yes sir, about that.

X Q. 79. How much did you pay for that?

A. $3.

X Q. 80. $3 an acre?

A. Yes sir.

X Q. 81. What kind of land is it?

A. Only pasture land. There are some spots of land on it that are pretty bad.

X Q. 82. It is what they call alkali salt-grass land?

A. Yes sir.

X Q. 83. That is all you bought in the last 12 years?

A. No sir.

X Q. 84. What else did you buy?

A. I bought some from Miller & Lux; somewhere in the neighborhood of 100 acres.

X Q. 85. 100 acres?

A. Yes sir.

X Q. 86. How much did you pay for that?

A. I paid $10 for some—for 40 acres.

X Q. 87. Give me the amount that you paid for the 100 acres.

A. I cannot do that. You can make the sum total yourself. I bought 40 acres for $10 an acre before Mr. Lux died, when it was Miller & Lux—40 acres at $10 an acre.

Mr. FULKERTH:

X Q. 88. $400.

A. Yes sir. After that I bought second-handed from another party that did not want to keep it, 10 acres—I don't remember now how much that was.

Mr. STONESIFER:

X Q. 89. Give us your best recollection.

817 A. The best of my recollection is vague. I cannot possibly tell. If I was at home and go to the deeds or to the records, I could tell.

X Q. 90. Was it $100 an acre?

A. No sir.

X Q. 91. Was it $5?

A. Yes sir, more than $5.

X Q. 92. $10 an acre?

A. More than that.

X Q. 93. Was it $15 an acre?

A. More than that.

X Q. 94. Was it $20?
A. More than that.
X Q. 95. Was it $25?
A. I will not go above that. I don't know positively. I don't know. I don't even know the sum total that I paid for it. I paid my predecessor something for his title.
X Q. 96. What else did you buy?
A. After that I bought 50 acres, and I think 99/100. I will not state positively. I could not state that positively.
X Q. 97. How much did you pay for it?
A. $50.
X Q. 98. $50 an acre?
A. $50 an acre.
X Q. 99. Any more?
A. That is all the land.
X Q. 100. In the last 12 years I am speaking about now; not what you had before, but what you bought in the last 12 years.
A. That is all.
X Q. 101. In the last 12 years.
A. I don't know. I may possibly have had that quarter section that I bought from Mr. Woods 12 years, but I don't know exactly the time.
X Q. 102. Now, have you got a bank account?
A. No sir.
X Q. 103. Any money in bank?
A. I am my own banker.
818 X Q. 104. Have you got any money in bank?
A. I have not.
X Q. 105. Any money anywhere?
A. Yes sir.
X Q. 106. How much?
A. I have got some in my pocket.

Mr. TREADWELL: I object to the question upon the ground that is not cross-examination. You cannot go into a man's private business.

A. (Continuing:) I will tell you what I have got. I left $400 with my wife before I left home, and she put it away. I have got over $100 in my pocket.
Mr. FULKERTH: We do not want to pry into your private business.
A. (Continuing:) If you want my private business, you can have it as far as I know. I am not failing. I don't owe any man a dollar that I cannot pay inside of an hour.

Mr. STONESIFER:

X Q. 107. You have $500?
A. I think I have.
X Q. 108. What other property have you?
A. I have got some horses.
X Q. 109. How many horses and mules?

A. I don't know, unless you give me time to call them by name

X Q. 110. Estimate it as near as you can get at it.

A. I think I have got somewhere in the neighborhood of 24 head of horses.

X Q. 111. 24?

A. I could not give it as a fact, horses and mules.

X Q. 112. That is near enough for me. What else?

819 A. I have got some cattle.

X Q. 113. How many?

A. The last time I counted them, I counted 58 head. Last week I sold 10 head of beef cattle.

X Q. 114. How many cattle did you have 12 years ago?

A. I don't know. I sold at one time, I think, all of 100 head.

X Q. 115. Was that over 12 years ago?

A. No sir, it is within 12 years.

X Q. 116. How does your business stand now with reference to 12 years ago? Is it about the same?

A. I think it is.

X Q. 117. Just about the same?

A. I have not made a great deal in the last five or six years, and another thing that put me back, if you want to know the particulars——.

X Q. 118. Yes.

A. Some four or five years ago my boys wanted to farm on their own account. I gave them my stock and agricultural implements, and helped them in other ways. They went and rented land, and they made a failure of it. That left me in the cold.

X Q. 119. How much did you lose by that?

A. I don't know.

X Q. 120. Did you lose any money?

A. Certainly.

X Q. 121. How much?

A. I cannot tell.

X Q. 122. As near as you can get at it.

A. I could not make any estimate.

820 X Q. 123. Do you realize, Mr. Bibby, that, according to your testimony, that 30 acres of land has yielded you in the last 12 years $20,000?

A. No sir, I don't think it has.

X Q. 124. You don't mean that your testimony shall figure out in any such way?

Mr. TREADWELL: I object to the question as not being proper cross-examination. You can examine the witness as to the facts, and nothing else. The witness is not bound to answer any such question.

Mr. STONESIFER:

X Q. 125. I understood you to say upon direct examination that your land would yield you nine tons a year.

A. I have made that statement.

X Q. 126. And you can sell it for $7 a ton?
A. I said I never sold any for less than $7, until this year.
X Q. 127. That is $63 an acre.

Mr. TREADWELL: I object to the question. That is a matter of computation. The witness is not bound to do any figuring.

A. I don't know.

Mr. STONESIFER:

X Q. 128. Seven times nine are 63.

Mr. TREADWELL: I object. Questions of that kind should not be asked the witness. The witness is not being cross-examined upon arithmetic. You need not answer that question, Mr. Bibby. Counsel can make his own computations.

Mr. STONESIFER:

X Q. 129. That is $63 an acre.

Mr. TREADWELL: I object. The witness need not answer that question.

821 Mr. STONESIFER:

X Q. 130. Do you refuse to answer?
A. I do.
X Q. 131. Out of that, how much have you paid in expenses?
A. I don't know.
X Q. 132. Have you any idea?
A. I have.
X Q. 133. What is it?
A. I have an idea of how much expenses, I have to pay for the water and irrigation, putting up my crops.
X Q. 134. Give me a lump sum of all your expenses per acre.
A. Per acre, I cannot give it you in a lump. I can give you the items.
X Q. 135. Give it me any way you can.
A. My water costs me $2 an acre; putting the water on, about 75 cents per acre; cutting and hauling, about 87½ cents per ton. That is about the amount of expenses.
X Q. 136. Per ton?
A. Yes sir.
X Q. 137. That is $7.87——

Mr. TREADWELL: I object to the question. The witness need not answer any arithmetical questions.

Mr. STONESIFER:

X Q. 138. Now, in the last 12 years, since you have been in the alfalfa business, have you made or lost money?
A. That I cannot answer. I think I must have made some.
X Q. 139. How much?
A. I don't know.
X Q. 140. Have you any idea?

A. No sir. I don't keep money. I trade. I buy cattle sometimes, and I sell them. Sometimes I lose, and sometimes I make.

822 X Q. 141. I just want to get at the average in the last 12 years.

A. That I cannot give.

X Q. 142. Has it been much or little?

A. I have made something, but I cannot tell you how much.

Redirect examination.

Mr. TREADWELL:

R. D. Q. 1. With regard to the Egyptian corn and potatoes that you have spoken of, you have to irrigate those crops?

A. Yes sir.

R. D. Q. 2. In speaking of your business, you say you have never kept any separate account of this alfalfa?

A. No sir.

R. D. Q. 3. You keep it in with your whole farm?

A. Yes sir, I throw it in all together. Whenever I get a dollar that I don't want for immediate use, I give it to my wife, and she takes care of it.

Recross-examination.

Mr. STONESIFER:

R. X Q. 1. You have done all this work yourself?

A. Principally, I said; I stated principally myself and sons. I have got six strapping, big sons, some as heavy as you.

R. X Q. 2. You have got extraordinary land, haven't you?

A. I have got some as good as anybody's.

R. X Q. 3. It is this sediment soil?

A. Yes sir, caused from the overflow of the Los Banos

823 creek. It runs in streaks.

R. X Q. 4. That is extraordinarily good land?

A. That is extraordinarily good land in my estimation.

R. X Q. 5. That is the kind of land you are testifying about?

A. That is the kind of land I am testifying about.

E. C. MORGAN, recalled for the complainant in rebuttal.

Mr. TREADWELL:

Q. 1. Can you state, Mr. Morgan, which of the customers of the company in Las Garzas section have their land in Stanislaus county?

A. I have a list of them here.

Q. 2. Here are three sections, headed "Irrigation Las Garzas section, Stanislaus Co., season 1895–'96; season 1896–'97; season 1897–'98." Are those correct statements, Mr. Morgan?

A. Yes sir.

Mr. TREADWELL: May I put those in instead of having him testify orally about them (handing)?

Mr. STONESIFER:

Q. 3. Did you do this yourself?
A. Yes sir.
Q. 4. You know this to be correct?
A. Yes sir.

Mr. STONESIFER: Put it in the record.

Mr. TREADWELL: Yes. I offer these statements in evidence, simply as a statement of the witness.

Mr. FULKERTH: Just copy them in as the testimony of Mr. Morgan.

824 (The statements are as follows:)

"Irrigation Las Garzas section, Stanislaus Co.

"Season 1895–'96.

"Anderson, A.	9	22.50
"Krogh, H.	55	137.50
"Morehead Bros.	10	25.
"Mott, John	7	17.50
"Werner, L. P.	15	37.50
"Total	96	240.

"Irrigation Las Garzas section, Stanislaus Co.

"Season 1896–'97.

"Anderson, A.	10	15.
"Krogh, Hans	55	82.50
"Keaton, Tom	16	24.
"Morehead Bros.	10	15.
"Mott, J. F.	7	10.50
"Miller, P.	9	13.50
"Werner, L. P.	16	24.
"Total	123	184.50

"Irrigation Las Garzas section, Stanislaus Co.

"Season 1897–'98.

"Alfalfa, 1.50.

"Anderson, A.	10.	15.
"Bowles, T.	20.	30.
"Krogh, H.	45.	67.50
"Keaton, T.	35.	52.50
"Morehead Bros.	10.	15.
"Miller, P.	25.	37.50
"Nourse, A. J.	9.	13.50
"Werner, L. P.	16.	24.
"Total	170.	255.00"

825 C. W. WOOD, called for the complainant in rebuttal, sworn.

Mr. TREADWELL:

Q. 1. What is your name?
A. Chester Worthington Wood.
Q. 2. What is your age?
A. 35.
Q. 3. Where do you reside?
A. Two miles and a half from Los Banos.
Q. 4. In what county?
A. Merced county.
Q. 5. How long have you resided in that neighborhood?
A. Ten years.
Q. 6. What is your business?
A. Fruit-raising, stock-raising, and general farming.
Q. 7. How long have you been engaged in farming?
A. Ten years.
Q. 8. Is any of your land irrigated from the canal of the complainant company?
A. Yes sir.
Q. 9. How much?
A. All of my own personal property.
Q. 10. How much is that?
A. 159 acres and a fraction.
Q. 11. Do you raise any alfalfa?
A. Yes sir.
Q. 12. How long have you been engaged in raising alfalfa?
A. Ten years.
Q. 13. Have you paid any attention to the raising of alfalfa by your neighbors or people in that vicinity during that time?
A. Yes sir.
Q. 14. Are you generally acquainted with the cost and products?

826 A. I try to post myself on those items.

Q. 15. Within your experience, how long will a stand of alfalfa last if it is well irrigated?
A. My experience has only been 12 years. I have known other stands to last that long, and even longer.
Q. 16. Yours have stood that long?
A. Not my own; some that was on the ranch when I moved over has been that long.
Q. 17. Have you ever had to reseed any of your own alfalfa?
A. No sir. I would say not as a field or crop. Spots once in a while would have to be reseeded.
Q. 18. That is due to what?
A. Drowning out. That is the only cause I have encountered.
Q. 19. That is, there are low places on the ground that get too much water when you irrigate?
A. Yes sir.
Q. 20. How much does it cost to put in a crop of alfalfa per acre?

A. I have never made a careful estimate as to that. I cannot answer that.

Q. 21. Cannot you, from your general experience, answer nearly; that is, give an approximate amount?

A. I think I can.

Q. 22. What would be a maximum amount?

A. It would be satisfactory to myself. I think it would cost, taking the average ground, about $10 per acre; pretty close to it.

Q. 23. What expenses are there in connection with the raising of alfalfa after the crop has been put in?

827 A. What do you mean by "when the crop has been put in"?

Q. 24. That is, year by year. What are the expenses in the keeping up of a stand of alfalfa?

A. Itemized, do you mean?

Q. 25. No, what are they? What things do you have to do?

A. Repairing the boxes; cleaning the ditches; building up of the levees where they are trodden down, and the expense of putting on the water.

Q. 26. Exclusive of the cost of the water, what do all those items amount to per acre per year?

A. Now I could not say. I have had very little of that work to do.

Q. 27. How much has it been with you?

A. I have not kept an account of that.

Q. 28. You can tell very nearly, can you not?

A. A nominal sum.

Q. 29. It has not amounted to much in your case?

A. No, very little in my case. That depends, of course, on the way a person makes their alfalfa field when they put it in, as to the size of the checks they make. If light checks were made, and you build them up, they would be soon broken down by stock tramping on them, that is, if you pasture the ground.

Q. 30. I understand you that in your own case you put up your checks substantially in the first instance, so that you would not have much of that to do?

A. Yes sir, I made them very large and heavy.

Q. 31. That is the kind of work that you say would cost

828 $10 an acre?

A. I think it would cost about that. I never kept track of it.

Q. 32. Do you cut your alfalfa, or pasture it, or both?

A. Both.

Q. 33. Where you cut alfalfa through the season, and it is well irrigated, how much hay can be cut off of an acre of alfalfa?

A. That would depend on the quality of soil.

Q. 34. Yes; I am speaking of average land. In all the questions I ask, I refer to average land.

A. I understand. In my case, about a ton and a half per acre to the crop.

Q. 35. And how many crops?

A. Some fields I cut three, and in others I cut five.

Q. 36. Do you mean that you can only cut three from some of it, or prefer to cut that?

A. I prefer to.

Q. 37. When you only cut three crops, you pasture the rest of the time?

A. Yes sir.

Q. 38. Where you cut five crops, do you do any pasturing?

A. Yes sir.

Q. 39. Between cuttings?

A. Yes sir, between cuttings, and after the last cutting.

Q. 40. What is the cost of cutting and stacking a ton of alfalfa hay?

A. About $1 per ton. That is my experience.

Q. 41. And what has been the average price at which you
829 could sell it in the stack or in the barn?

A. I cannot answer that question. I don't know what the prices have been during the last ten years. $4 seems to be the average this year.

Q. 42. What was it last year?

A. I sold some for $12 last year in the stack.

Q. 43. The year before?

A. I cannot remember what that was. I don't remember selling any.

Q. 44. Have you generally sold or fed your hay to your own stock?

A. I generally feed it.

Q. 45. How much alfalfa have you on this piece of land?

A. 42 acres.

Q. 46. And you have other crops with which you feed your stock or not?

A. No sir.

Q. 47. You feed your stock entirely on alfalfa hay?

A. Yes sir.

Q. 48. How many head of stock have you been able to feed per acre in that way?

A. I never kept an account of that.

Q. 49. Are you able to tell in general how much could be fed in that way; how many head could be supported by feeding and pasturing per acre?

A. I could make an estimate.

Q. 50. From your best experience, how much could you say?

A. Taking it by the year, do you mean?

Q. 51. Yes, taking it by the year.

A. I think a person could handle two head of cattle easily.
830 Q. 52. To the acre?

A. Very easily.

Q. 53. Can you turn out two head of beef cattle per acre?

A. I never have had that experience, and could not answer that. I think a person could.

Cross-examination.

Mr. STONESIFER:

X Q. 1. You have good land, have you?
A. Yes sir.
X Q. 2. As good as there is below this canal?
A. I think so.
X Q. 3. How much did you pay for it?
A. $125 per acre.
X Q. 4. Who did you buy it from?
A. I bought it from my father.
X Q. 5. When?
A. Really, I cannot remember the date. In 1893 I made my first purchase. 1892 or 1893. I am not positive, but it was one of those years.
X Q. 6. You have a large prune orchard, have you not?
A. Yes sir, I have quite a good-sized orchard.
X Q. 7. How much have you in prunes?
A. I had originally 100 acres.
X Q. 8. How much have you now?
A. 90.
X Q. 9. That is your principal source of income?
A. It will be this year.
X Q. 10. We are talking now of the last 10 years.
A. No sir, it has not.
X Q. 11. I believe you said you had 42 acres in alfalfa.
831 A. Yes sir.
X Q. 12. Has that been your principal source of income in the last 10 years?
A. No sir.
X Q. 13. Between that and the prune orchard, which has been your principal source of income?
A. I have derived more from my alfalfa than I have from the prunes, for the simple reason that last year was the first crop. This is the seventh year since the orchard was planted.
X Q. 14. Did you pay cash for your land?
A. No sir.
X Q. 15. Is it all paid for yet?
A. Yes sir.
X Q. 16. In cash?
A. No sir.
X Q. 17. Out of that 42 acres?
A. No sir.
X Q. 18. I understood you to say your income was derived more from that than anything else?
A. Yes sir, during the time since I bought the place, I think in 1892 or 1893, I have derived more from the alfalfa than the prunes, up to this year; not including this year.
X Q. 19. How much have you cleared off of your alfalfa per annum?
A. I could not state that now. I don't know.

X Q. 20. Give me an estimate as near as you can.
A. I cannot make an estimate.

Mr. TREADWELL: The witness has stated the facts. You can draw your own conclusions.

Mr. STONESIFER:

X Q. 21. Why cannot you make an estimate?
A. I have not kept an accurate account of it.
X Q. 22. You seem to be very accurate about how many tons of hay you have cut.
A. Yes sir.
832 X Q. 23. What will it cost to turn that into money, including the interest on your investment, and every expense that you are at?

Mr. TREADWELL: I object to the interest on investment, as not being cross-examination. We asked the witness nothing but how much it could be cut for, and how much it cost to cut and preserve it.

A. I cannot make an estimate on that. It is a very hard matter for a person to do it without making a calculation.

Mr. STONESIFER:

X Q. 24. Then I will ask you to make a calculation.
A. That would be impossible, as I have not my accounts with me, and if I should do it here, it would simply be a rough estimate, and I do not care to do that.
X Q. 25. Then, as I understand you, it is impossible for you to say whether you have made or lost money on this 42 acres in the last 10 years?

Mr. TREADWELL: I object to the question. The witness has not said anything of the sort, or anything like it.
Mr. FULKERTH: Do not prompt the witness.
Mr. TREADWELL: I have a right to make an objection. You have no right to put words into the witness's mouth.
Mr. STONESIFER: You have no right to chip in.
Mr. TREADWELL: I have a right to make any objection I please, and make the objection that he has not so stated.
The WITNESS: What is the question?

Mr. STONESIFER:

X Q. 26. Read the question, Mr. Reporter.
(The reporter reads the question as follows: "Then, as I
833 understand you, it is impossible for you to say whether you have made or lost money on this 42 acres in the last 10 years?
A. I don't think you understand me correctly. You said you understood me to say so.
X Q. 27. I will ask you now whether you have made or lost in the last 10 years?

A. I have made.
X Q. 28. How much?
A. I don't know.
X Q. 29. Can you give an estimate?
A. No sir, I have done pretty well.
X Q. 30. You have done pretty well?
A. Yes sir, I consider so.
X Q. 31. But you cannot give us the figures, or an estimate, even?
A. Do you want an estimate on the alfalfa proposition?
X Q. 32. Yes.
A. I will place an estimate per acre on this alfalfa that I have, at about $18; something like that.
Mr. TREADWELL: You mean $18 per year per acre?
A. Yes sir. That, you understand, is an estimate without making any calculations. That is my opinion.

Mr. STONESIFER:

X Q. 33. How do you make up that estimate?
A. From the number of tons cut per acre, the price you can sell it for, and the cost and everything else; that is, what it cost to produce it, and what you can get for it.
X Q. 34. Will you give us that in detail? Give us every particular item that you can think of that enters into that. Start out, first, with the profit. Take it by the acre.
834 A. You say the profit?
X Q. 35. Yes, start out with the profit, and then we will come back to the expenses.
A. Very well.
X Q. 36. Your profit is how much per acre? This is the gross profit.

Mr. TREADWELL: Do you mean proceeds?
Mr. STONESIFER: Yes, proceeds.

X Q. 37. What are your proceeds?
A. We will take this year.
X Q. 38. We will average it for 10 years. If this is an average year, we will take this year.
A. This year is not an average year, in my opinion.
X Q. 39. We will take this year, then; any way that you desire.
A. 7½ tons to the acre. You want it itemized?
X Q. 40. Yes.
A. I can cut 7½ tons per acre, and this year it is worth $4 per ton. That is what it has been sold for.
X Q. 41. That is $30?
A. Yes sir.
X Q. 42. Per acre?
A. Yes sir. Now, there is pasturage between the crops. That does not amount to a great deal, but something. Probably $1 per acre by the year.
X Q. 43. That is $31.
A. I guess that would conclude the profits.

X Q. 44. Now, let us get at the expenses.
A. The cutting of the hay?
X Q. 45. Yes.
A. Say, $1 per ton.

Mr. TREADWELL:

Q. Do you mean cutting alone, or cutting and stacking?
835 A. Cutting, raking and stacking; everything necessary for the curing of the hay.

Mr. STONESIFER:

X Q. 46. $1 per ton, that would be $7.50 per acre. We are figuring this on acres, now. $7.50 per acre, is it not?
A. Read that question again.
X Q. 47. Read the question, Mr. Reporter.

(The reporter reads the question.)

A. Yes sir, by the year. Water bill, $2 per acre, and the expenses of putting the water on. It cost me about 10 cents per acre. That is for this year. I think there is nothing else.
X Q. 48. That would be $9.60. Is that all that you include in the expenses?
A. I cannot think of anything else; that is, for this year, I am speaking of.
X Q. 49. What will the cost of maintenance be, that is, to keep up your ranch?
A. What do you mean by "the ranch"?
X Q. 50. You have to keep up fence, ditches, checks, and many things.
A. Certainly. There has not any of it been done this year.
X Q. 51. There is no such expense?
A. Not for me this year.
X Q. 52. What is the average per year? You have a certain amount of cost of maintenance, don't you?
A. As I stated before, it is very nominal with me; very little in-
deed. I don't suppose it has cost me, since I seeded my al-
836 falfa, after once getting it seeded, I don't think I paid out $5 for maintenance. I have kept no account, but I don't think I have.
X Q. 53. That is, in the 10 years?
A. In the 7 years.
X Q. 54. $5 per acre, or on the whole place?
A. On the whole place; that is, after once getting it seeded and ready to raise it.
X Q. 55. What are your taxes on this land per acre?
A. The taxes all come in together. I cannot state exactly what that amount is on this particular piece.
X Q. 56. You do not figure that in?
A. No sir.
X Q. 57. Do you figure any interest on the value of your property, this 42 acres?

A. No sir, I have not.
X Q. 58. You do not figure that in?
A. No sir. You have the items there.
X Q. 59. Nothing of that kind you take into consideration in arriving at the profits that you make?
A. No sir, not in this case.

Mr. TREADWELL: No further questions.

837 JACOB GARDINER, called for the complainant in rebuttal, sworn.

Mr. TREADWELL:

Q. 1. What is your full name?
A. Jacob Gardiner.
Q. 2. What is your age?
A. 51.
Q. 3. Where do you reside?
A. About a mile from Los Banos, Merced county.
Q. 4. What is your business?
A. Farmer.
Q. 5. How long have you been engaged in farming in that vicinity?
A. About 18 years.
Q. 6. Do you farm on your own land, or rent, or both?
A. I rent.
Q. 7. Do you raise any alfalfa?
A. Yes sir.
Q. 8. How long have you been engaged in raising alfalfa?
A. I bought the piece of 7¾ acres in 1891.
Q. 9. How much other alfalfa do you farm?
A. I sold that again, and have not farmed any only in the last two months.
Q. 10. The only alfalfa you have farmed was that 7¾ acres?
A. No sir, I am raising alfalfa now.
Q. 11. I mean up to just now.
A. Yes sir.
Q. 12. Prior to that you did not raise any alfalfa?
A. No sir.
Q. 13. How long did you raise that 7¾ acres of alfalfa? How long did you keep it?
A. I think I had it about 3 years.
Q. 14. Was the land already sowed to alfalfa when you bought it?
838 A. Yes sir.
Q. 15. How much did it cost you a year to keep that alfalfa growing; to keep up your checks, fences, ditches, and so forth?
A. It was all checked and fenced when I bought it.
Q. 16. You did not have any work of that kind to do at all?
A. No sir.
Q. 17. Did you cut it for hay, or pasture it?
A. I pastured it.

Q. 18. Entirely?
A. Yes sir.
Q. 19. How many head of stock were you able to keep on it per acre. How many did you keep on it all together on the average?
A. Sometimes 8 or 10; sometimes 3 or 4.
Q. 20. On an average, how many could you keep on an acre?
A. The year round?
Q. 21. Yes.
A. About one.
Q. 22. You never sold any hay at all then?
A. No sir.

Mr. TREADWELL: That is all.
Mr. STONESIFER: That is all. I should like to ask Mr. Wood another question.

C. W. WOOD recalled for further cross-examination.

Mr. STONESIFER:

X Q. 60. You reside at Los Banos, I understood you to say?
A. Yes sir.
X Q. 61. What is the prevailing rate of interest at Los Banos?
A. I don't know.
839 X Q. 62. What do the people generally pay there?
A. I am not hiring any money, or loaning any, and I cannot say.
X Q. 63. 10 %?

Mr. TREADWELL: The witness does not know, he says.

Mr. STONESIFER:

X Q. 64. As near as you can state.
A. In some instances I have known parties to pay 10 %, and I have known others to pay 7 %.
X Q. 65. More pay 10 % than 7 %?
A. I could not say.
X Q. 66. What is the rate of taxation in Merced county?
A. I don't know what it is this year.
X Q. 67. Do you know what it was last year?
A. No sir, I don't remember.

Mr. STONESIFER: That is all.

GEORGE A. FINK, called for the complainant in rebuttal, sworn.

Mr. TREADWELL:

Q. 1. What is your name?
A. George A. Fink.
Q. 2. What is your age?
A. 35.
Q. 3. Where do you reside?
A. Crow's Landing, Stanislaus county.

Q. 4. How long have you lived in that vicinity?
A. Since 1874.
Q. 5. What is your business?
A. Farming.
Q. 6. How long have you been engaged in the farming business?
840 A. 12 or 15 years.
Q. 7. Do you raise any alfalfa?
A. Yes sir.
Q. 8. How much land have you in alfalfa?
A. My brother and I have 55 acres and a fraction together.

Mr. FULKERTH:

Q. Which brother?
A. C. H.
Q. Charlie?
A. Yes sir.

Mr. TREADWELL:

Q. 9. Is that land irrigated from the canal of the complainant company?
A. Yes sir.
Q. 10. How long have you had that alfalfa?
A. Since 1890.
Q. 11. Did you put it in yourself?
A. No sir.
Q. 12. Is it still a good stand?
A. No sir.
Q. 13. Have you ever reseeded any of it?
A. I broke part of it up this spring; part of it was planted in 1885.
Q. 14. And now needs reseeding?
A. Yes sir.
Q. 15. I suppose all of it needs reseeding?
A. Yes sir.
Q. 16. Did you ever put in any alfalfa?
A. No sir.
Q. 17. Do you cut your alfalfa for hay, or pasture it?
A. Both.
Q. 18. On an average, taking the land in that vicinity, the average alfalfa land, how much alfalfa can be cut for hay in a year with abundant irrigation?
A. About 8 tons.
Q. 19. How much does it cost to cut and stack it, and get it ready for market?
A. About $1 per ton.
Q. 20. How much does it cost you to keep up your checks, ditches, fences, and the land generally, per year per acre?
A. About $1 per acre, I think.
Q. 21. On an average, how much can be got per ton for alfalfa hay in the stack?

A. $4.

841 Q. 22. That is, this year?

A. Yes sir.

Q. 23. How much has it been in past years?

A. That is about an average, $4 a ton.

Q. 24. When you cut alfalfa for hay, do you also pasture it between the cuttings and after the last cutting?

A. I let the stock run on it a few days, possibly. It does not amount to much. After the last cutting, we pasture it—in the fall of the year.

Q. 25. About how long can you pasture after the last cutting?

A. We generally let our stock run all the winter.

Q. 26. You are one of the gentlemen who signed the petition to the board of supervisors to fix the rates which are in controversy in this case, are you not?

A. Yes sir.

Cross-examination.

Mr. STONESIFER:

X Q. 1. You do not take into consideration the value of your property, do you, in forming your estimate of the item of cost?

Mr. TREADWELL: I object as not being cross-examination. There is not anything to take into consideration. We asked him how much he gets for the hay, and how much it cost him to cut it and stack it.

A. Not at $1 per acre, I did not.

Mr. STONESIFER:

X Q. 2. In your computation for Mr. Treadwell, did you consider that at all?

A. No sir.

X Q. 3. Did you consider your taxes as an element of cost?

A. No sir.

X Q. 4. Did you consider the amount of stock, the cattle,
842 horses and mules that you have to run there, as an item of cost?

Mr. TREADWELL: I should like that question explained.

A. I don't know as I understand what you are drifting at.

Mr. STONESIFER:

X Q. 5. On an alfalfa ranch, you generally run some stock on it?

A. Yes sir.

X Q. 6. It requires money to buy that stock?

A. Yes sir.

X Q. 7. It takes interest on that money, if you have to borrow it?

A. Yes sir.

X Q. 8. If you do not borrow it, it is worth interest?

A. Yes sir.

X Q. 9. Did you consider that in your item of cost?
A. No sir, I did not.
X Q. 10. Most all of these alfalfa ranches are running to stock?
A. Mostly.
X Q. 11. They are pretty much all stocked, either with cattle, horses, or some other live stock?
A. Mostly.
X Q. 12. There are very few cut entirely for hay?
A. A few.
X Q. 13. The cases in which you sell hay there are isolated cases, are they not? It is not a general thing to go into the hay business?
A. We made it a business the first five or six years we had the place.
X Q. 14. You run stock, too, you said?
A. Yes sir.
X Q. 15. You said it was worth $4 a ton this year?
A. Yes sir.
X Q. 16. Do you know what it is worth in the market of San Francisco?
A. No sir, I do not.
843 X Q. 17. Have you looked at the daily quotations?
A. No sir.

Mr. TREADWELL: That is all.

PETER HANSEN, recalled for the complainant in rebuttal.

Mr. TREADWELL:

Q. 1. In your former testimony, you stated that you left the employ of the canal company in 1897?
A. Yes sir.
Q. 2. Do you remember about what time in the year you left their employ?
A. The 1st of November, I think.
Q. 3. You spoke of the section on which you were the sectionman. You said it was commonly called Cottonwood section?
A. Yes sir.
Q. 4. It is also called Las Garzas section?
A. Yes sir.
Q. 5. It is the same section as is called Las Garzas section?
A. Yes sir.
Q. 6. The Las Garzas waste ditch is on that section?
A. Yes sir.
Q. 7. In August, 1897, or at any time in the summer and fall of 1897, when water was scarce, was any water allowed to run down the Las Garzas waste ditch?
A. Not when it was scarce.
Q. 8. Whenever water was needed for irrigation, there was none running down that waste ditch?
A. Not to my knowledge.

844 Q. 9. You had charge of that, didn't you?
A. Yes sir.
Q. 10. There is a gate there which has to be lifted to let the water out?
A. Yes sir.
Q. 11. During the scarce season, you did not raise that gate, or allow it to be raised, to your knowledge, did you?
A. No sir, not when it was scarce in my section.
Q. 12. Does the St. Louis creek cross your section?
A. No sir.

Mr. STONESIFER: No questions. I want to ask Mr. Fink a question or two more.

GEORGE A. FINK, recalled for further cross-examination.

Mr. STONESIFER:

X Q. 18. The questions put to you by Mr. Treadwell as to the alfalfa that you raised and cut, were based on abundant irrigation. Do you get an abundant supply of water on your land; that is, all that is needed at all times of the year?
A. I could not say that I do.

Redirect examination.

Mr. TREADWELL:

R. D. Q. 1. But the estimate that you have made has been based on the water you have actually got, has it not?
A. Yes sir.

845 CHARLES H. FINK, called for the complainant in rebuttal, sworn.

Mr. TREADWELL:

Q. 1. What is your full name?
A. Charles Henry Fink.
Q. 2. What is your age?
A. 39.
Q. 3. Where do you reside?
A. Crow's Landing.
Q. 4. Stanislaus county?
A. Yes sir.
Q. 5. You are a brother of Mr. George Fink, who has just testified?
A. Yes sir.
Q. 6. And you own land together with him?
A. Yes sir.
Q. 7. On an average, what has it cost to keep that alfalfa up? By "keeping it up," I mean including the cost of keeping up your checks, ditches, boxes, or whatever else you used for irrigation, your fences, and the general annual expense of keeping it up.

A. That is, during the year?

Q. 8. Yes, per acre, per year.

A. I don't know. We have not got any boxes, and did not have but a very little fencing to do, and it has cost us but very little to keep it up.

Q. 9. You think that has not been a material item.

A. It really has amounted to very little.

Q. 10. How much does it cost per acre per year to put the water on the land, not counting in the cost of the water, but the labor of irrigating?

A. Just the irrigating alone?

Q. 11. Yes.

A. About 15 cents an acre.

Q. 12. How much have your taxes been on an average there?

846 A. Somewhere about $32, or $34, on that land.

Q. 13. That is, you mean just on this alfalfa land?

A. Yes, sir. I think it was $34 this year, if I remember right; $34 and some cents.

Q. 14. Have you any more land than you have in alfalfa?

A. Yes sir.

Q. 15. Does not that $34 include all your land?

A. No sir.

Q. 16. Just on this field?

A. Just the alfalfa field.

Q. 17. How much hay on an average can you cut to the acre per year?

A. If it is a good stand, we cut the first five years that we had that land almost entirely to hay.

Q. 18. During that time, how many tons per acre did you get off of it?

A. Some seasons we would get something like 7 tons; in other years 8.

Q. 19. What would be a fair average?

A. About 7 tons, I think.

Q. 20. Since that time, the alfalfa has been gradually running out, and does not produce so well?

A. It does not produce so well.

Q. 21. About how often, according to your experience, ought alfalfa to be reseeded for the best profit?

A. Every seven years, I think.

Q. 22. On an average, how much does it cost to cut and stack the hay, and get it ready for sale, per ton?

A. About 85 cents or 90 cents.

Q. 23. And what has been the average price in the stack there?

A. Something like $4; $4.50.

847 Q. 24. You also signed the petition to the board of supervisors to fix these rates, did you not?

A. Yes sir.

Cross-examination.

Mr. STONESIFER:

X Q. 1. You do not consider in your estimate, Mr. Fink, a fair rate on the value of your property in running this alfalfa ranch.
A. No, I did not include that.
X Q. 2. Nor your taxes.

Mr. TREADWELL: I object. The witness has made no estimates at all. He has answered as to specific facts only.

Mr. STONESIFER:

X Q. 3. That is, you have not included, as an item of cost per annum, your taxes per annum on this land?
A. No sir.
X Q. 4. Are there any other items in your farming operations? Those things are necessary to be considered, are they not? When you arrive at your net profits of your farming operations, it is necessary to consider these other items, is it not?
A. Yes sir, I think it is.

Redirect examination.

Mr. TREADWELL:

R. D. Q. 1. How much did that land cost?
A. $90.
R. D. Q. 2. It was then seeded in alfalfa?
A. Yes sir, and fenced.
R. D. Q. 3. And a good stand on it?
A. Yes sir.

848 ROGER FAY, called for the complainant in rebuttal, sworn.

Mr. TREADWELL:

Q. 1. What is your full name?
A. Roger Fay.
Q. 2. How old are you?
A. About 48 years old.
Q. 3. Where do you live?
A. At Volta, Merced county.
Q. 4. Do you know the creek called the St. Louis creek?
A. Yes sir.
Q. 5. Do you live near that?
A. Alongside of it.
Q. 6. Did you live there during the year 1897?
A. Yes sir.
Q. 7. All that time?
A. Yes sir.
Q. 8. And lived there a good while before that?
A. Yes sir.
Q. 9. And have lived there ever since?
A. Yes sir.

Q. 10. Do you know the dam which is in St. Louis creek, near the canal of the company?
A. Yes sir.
Q. 11. What kind of a dam is that?
A. A very good dam.
Q. 12. What is it made of?
A. It is made of gravel and dirt.
Q. 13. When any water runs down that creek, that dam goes right out, does it not?
A. Yes sir.
Q. 14. When was the last time that that dam went out?
A. In 1897.
Q. 15. What time in 1897?
A. I could not tell you exactly?
Q. 16. Was it during the summer flood?
A. Yes sir.
Q. 17. Was it replaced right after that? Was it put back again after that flood?
A. Yes, sir, right away.
849 Q. 18. Has it been there ever since?
A. Yes sir, I have a dam right alongside of it myself.
Q. 19. No water has run from the canal down St. Louis creek since the flood of 1897?
A. No sir.

Mr. STONESIFER: No questions.

SAMUEL O. CRITTENDEN, called for the complainant in rebuttal, sworn.

Mr. TREADWELL:

Q. 1. What is your full name?
A. Samuel O. Crittenden.
Q. 2. What is your age?
A. 54.
Q. 3. Where do you reside?
A. In Ingomar.
Q. 4. In Merced county?
A. Yes sir.
Q. 5. How long have you resided in that vicinity?
A. Six years.
Q. 6. What is your business?
A. Farming.
Q. 7. Do you raise any alfalfa there?
A. Yes sir, very little.
Q. 8. How much?
A. I have 20 acres of alfalfa.
Q. 9. How long have you had that 20 acres of alfalfa?
A. I have had 10 acres of it about five years—I think about four years.
Q. 10. And the rest?
A. I put the rest in a year ago.

Q. 11. Is that alfalfa field irrigated from the canal of the complainant company?

A. Yes sir.

850 Q. 12. Have you also observed the raising of alfalfa in your vicinity among your neighbors?

A. Quite a little.

Q. 13. You have already said you put that alfalfa in yourself?

A. Yes sir.

Q. 14. How much does it cost per acre to put in a crop of alfalfa, putting it in well?

A. I think it will depend on the land a good deal.

Q. 15. I mean on average land, taking the average all through. We know some land is smooth and level, and some rough. On an average, what will it cost to put in a crop of alfalfa, in good condition?

A. The best estimate I could make—I have never kept an account—would be from $7 to $8 an acre.

Q. 16. And how much would it cost per year per acre to keep it up after that, that is, the expense of keeping up your checks and whatever else you have got?

A. I think it would be very little, if it was done in that way and done well.

Q. 17. How has it been with you?

A. It has not cost me very much.

Q. 18. Could you state an amount—a top amount?

A. I should have to guess at it.

Q. 19. About how much would you say was fully enough?

A. The amount per acre per year?

Q. 20. Yes, how much would it cost per acre per year to keep it up, if it was done right in the first place?

A. I think 25 cents an acre would be a big estimate, if it was done properly.

851 Q. 21. How much are the taxes on an average, on that kind of land there?

A. I don't know as I understand you.

Q. 22. I will get at it in another way. What is the average market price of alfalfa land in that section of Merced county?

A. I could hardly say, only that I have heard people talk—those that have bought.

Q. 23. From your general knowledge there? You know pretty well.

A. Land that is in alfalfa is usually valued at $100 an acre.

Q. 24. How much is land worth $100 per acre usually assessed for there?

A. I could not state that positively. The assessment has never been changed on mine.

Mr. FULKERTH: What is the rate of assessment?

Mr. TREADWELL: I am going to ask him that.

Q. 25. Take the case of your land. How much is your alfalfa land worth per acre as it stands? What do you consider it worth?

A. I would not like to take $100 for it.
Q. 26. How much is it assessed for?
A. $12 an acre.
Q. 27. Is that about the average way that they assess there in that county?
A. No sir, I think not.

Mr. FULKERTH:

Q. Do you make any statement every year to the assessor?

Mr. TREADWELL: He is not required by the law to do so. I do not know what he does. You can cross-examine him hereafter, if you wish.

Q. 28. Do you know what the usual rate of taxation in Merced county is for State and county taxes?
852 A. It has slipped my mind now. I can hardly think of it.
Q. 29. Do you cut your alfalfa for hay, or pasture it?
A. Both. I cut it for hay this year.
Q. 30. How much does it cost to cut and stack a ton of alfalfa, on the average?
A. I think $1 a ton, to put it up in the stack, would be a good price.
Q. 31. How much, on the average, will it sell for in the stack there?
A. I have never sold any hay, and I really could not answer that question.
Q. 32. You do not know what the general price is?
A. No sir. I have bought some.
Q. 33. Are you able to pasture the alfalfa between cuttings at all?
A. I never have; I could do it, but I never do.
Q. 34. Do you pasture after the last cutting?
A. Yes sir.
Q. 35. During the fall and winter?
A. Yes sir.

Cross-examination.

Mr. STONESIFER:

X Q. 1. The rate of taxation is about $1.50 in Merced, is it not?
A. Yes sir, I think it is.
X Q. 2. In estimating the profits on alfalfa, have you taken into consideration the fair income on the value of your land?

Mr. TREADWELL: I object to the question, as not being cross-examination. We asked the witness nothing about profits at all. I cannot understand the purpose of such questions. All we have asked the witness is as to specific points.
Mr. STONESIFER: That is all.

(A recess was here taken until 2 o'clock p. m.)

853 *Afternoon Session.*

C. E. GRUNSKY, recalled for complainant in rebuttal.

Mr. TREADWELL:

Q. 1. Have you examined the estimates of Mr. R. H. Goodwin, of the cost of construction of the canal of complainant, submitted to the board of supervisors of Stanislaus county, as shown in "Respondents' Exhibit G" in this case?

A. Yes sir, I made an examination of that testimony.

Q. 2. What proportion of the entire cost estimated by Mr. Goodwin is shown by his figures to be in the parallel canal?

A. 18.2%.

Cross-examination.

Mr. STONESIFER:

X Q. 1. Do you know the actual cost of that parallel canal?

Mr. TREADWELL: I object to that question. That is not cross-examination, and I advise the witness he need not answer. I simply asked the witness to interpret Mr. Goodwin's figures.

Mr. STONESIFER: I ask Mr. Grunsky if he knows the actual cost of that parallel canal as shown by the books of this company.

Mr. TREADWELL: I advise the witness he need not answer.

Mr. STONESIFER: I suppose Mr. Grunsky wants to state
854 anything he knows in his profession.

A. I am not prepared to answer.

X Q. 2. You do not know what the actual cost of that parallel canal is?

A. No sir, I do not know it.

X Q. 3. Do you know what the reasonable cost of that parallel canal would be?

Mr. TREADWELL: I object to the question as not being cross-examination, and I advise the witness he need not answer. I introduced no evidence as to the cost of the parallel canal, or any other except the actual cost.

A. I am not prepared to answer the question.

Mr. STONESIFER:

X Q. 4. Then you decline to answer the question?

A. I decline to answer.

X Q. 5. Then, if you do not know what the reasonable cost is, or what the actual cost is, how can you say what percentage of the whole cost is this parallel canal?

Mr. TREADWELL: I object. The witness has not so testified. He has been simply asked what Mr. Goodwin's figures were.

A. I have simply testified on the basis of Mr. Goodwin's testi-

mony, which I stated I had examined, and it was simply an interpretation of Mr. Goodwin's estimate which I was giving, not an estimate of my own as to the cost of the canal.

Mr. STONESIFER:

X Q. 6. Simply a conclusion that you drew?

A. From Mr. Goodwin's figures as to the proportional cost.

X Q. 7. What are his figures as to the cost of this parallel canal?

855 Mr. TREADWELL: I object. They are in evidence, and placed in evidence by you. Further I object, if the witness is asked about them, he must be shown now those figures.

Mr. STONESIFER: You can show him whatever you want. He seems to know all about it.

Mr. TREADWELL: It does not follow he can remember those long tables of figures.

Mr. STONESIFER: I presume Mr. Grunsky would not make a statement himself unless he had informed himself about it.

The WITNESS: I have very carefully examined the testimony of Mr. Goodwin.

Mr. STONESIFER:

X Q. 8. I presume you have.

A. Yes. He gives the total cost of the entire structure, including the parallel canal, as $312,358, in which is included an item for engineering and incidental expenses of $25,723.40, leaving the net estimate for main and parallel canals, $286,634.60. The earth-work in the parallel canal Mr. Goodwin has estimated at $46,108.53. The structures, $3745.75, with an element of slight uncertainty with reference to the structures, because in some cases Mr. Goodwin does not indicate which of two similar structures is in the parallel canal, and which is in the main canal, and there are slight differences sometimes in the two structures. The right of way, 172.2 acres, at $3, $516.60, and 71.2 acres, at $25, $1780, together, $2296.60, making the total estimated cost of the parallel canal $52,150.88.

X Q. 9. That is according to his figures?

A. All according to Mr. Goodwin's figures, and the testi-

856 mony, as I have seen it in the transcript. Apportioning the engineering and incidental expenses in proportion to the cost of $52,150.88 for the parallel canal, and $286,634.60 as the aggregate cost of the whole work, makes the apportionment for the parallel canal $4680.17, which, added to the $52,150.88, makes the total estimated value of the parallel canal $56,831.05.

X Q. 10. According to his testimony.

A. According to Mr. Goodwin's testimony, which — 18.2 % of the total estimated cost or value of the canal.

SAMUEL ALEXANDER SMITH, called for the complainant in rebuttal, sworn.

Mr. TREADWELL:

Q. 1. What is your age?
A. 60.
Q. 2. Where do you reside?
A. Near Los Banos, in Merced county.
Q. 3. How long have you resided in that vicinity?
A. Since the fall of 1868.
Q. 4. What is your business?
A. Farming.
Q. 5. How long have you been engaged in farming in that country?
A. Since I have lived there.
Q. 6. Do you, among other things, raise alfalfa?
A. Yes sir.
Q. 7. How long have you been engaged in raising alfalfa?
A. I don't remember exactly when I seeded first, but it is
857 20 years, perhaps a little over; maybe 21 or 22.
Q. 8. How many acres do you cultivate to alfalfa?
A. At that time I seeded 10 acres. I have now about 90 acres in alfalfa.
Q. 9. Is that land irrigated from the canal of the complainant company?
A. It is irrigated from what is known as the new canal.
Q. 10. That is the canal commonly called the outside canal?
A. Yes sir.
Q. 11. Before that canal was built, did you irrigate your land?
A. Yes sir.
Q. 12. From what source?
A. That is, I irrigated this small amount that I had in alfalfa from the old canal—irrigated it on the upper side.
Q. 13. The additional land was never irrigated until the new canal was built?
A. No sir. The first seeding that I irrigated from the old canal was 10 acres, and afterwards 9 acres more, which made 19 acres altogether.
Q. 14. Have you familiarized yourself with the raising of alfalfa among your neighbors generally in that country?
A. Well, somewhat.
Q. 15. Within your experience, taking the average land in that country, how much would it cost to put in a crop of alfalfa in a proper shape, preparing the ground for irrigation, planting the alfalfa, and doing everything else necessary to get it in shape to irrigate and raise?
A. There are some pieces of land that can be prepared much easier than other pieces.
858 Q. 16. But other average land?
A. Perhaps $9 or $10. I think $9 ought to prepare land pretty well; that is, the average land.

Q. 17. And when the ground is properly prepared, and the seed sowed, and making a stand, how soon will it require reseeding?

A. The first that I seeded is a very good stand yet.

Q. 18. That is, twenty years?

A. Yes sir.

Q. 19. How much does it cost per acre per year to keep the land in order, keeping up your levees, checks, ditches, fences, and whatever other expenses there are connected with it?

A. I would not think it would cost more than 50 cents an acre. I think that would be a fair average.

Q. 20. How much alfalfa hay can, on an average, be cut from irrigated alfalfa per year?

A. I think 8 tons would be about an average; that is, good land; poor land would not produce that.

Q. 21. I mean such land as is suitable to raise alfalfa on.

A. Yes sir, my judgment is it does not pay to seed poor land to alfalfa.

Q. 22. How much does it cost on an average to cut, haul and stack alfalfa hay?

A. I should estimate about $1.25 per ton.

Q. 23. During this period, what has been the average price for alfalfa hay in the stack there?

A. I think $4 would be a fair price.

Q. 24. How much are the taxes, on an average, on land of that character in Merced county?

859 A. My land has only been under irrigation for two years now, excepting this small amount that lay near the canal that I irrigated from the upper side. It has been assessed quite low. I think about $7 an acre.

Q. 25. How much do they generally assess alfalfa land, that is, land that is planted in alfalfa, at? How much is it usually assessed, fair alfalfa land?

A. I should not like to say exactly, but my judgment is about $30.

Q. 26. What is the usual rate of taxation in Merced county, that is, about, approximately?

A. I think about $1.65 or $1.70.

Q. 27. Is all the land that you own situated above the old canal?

A. Yes sir, all to speak of.

Q. 28. And the greater portion of it could not have been irrigated from the old canal at all, could it?

A. No sir.

Q. 29. But is now susceptible to irrigation from the outside canal?

A. Yes sir.

Q. 30. Has the building of the outside canal affected the price of your land?

A. I think it has.

Q. 31. How much more is it worth since that canal was built than it was before?

Mr. FULKERTH: We object to the question as immaterial.

A. My land does not all lay near the old canal. Some of it lays further away.

Mr. TREADWELL:

860 Q. 32. I am only speaking now of such land as could be irrigated conveniently from the new canal.

A. It can all be irrigated from the new canal, but that part of it laying nearest to the old canal was worth more at that time on account of being near the old canal, but it has increased the value of the land considerably.

Q. 33. Take land lying above the old canal, and which could not have been irrigated at all from that canal, and which can now be irrigated from the outside canal: how much more is that worth now than it was before the outside canal was built?

A. $25.

Q. 34. An acre?

A. Yes sir.

Cross-examination.

Mr. STONESIFER:

X Q. 1. What water bill did you pay on your land irrigated by the outside canal?

A. Do you mean this year or last year?

X Q. 2. Both.

A. I think we paid $1.50 last year. Ours was new alfalfa last year, and it was a bad spring to get a start, and they made it easier on us on that account.

X Q. 3. What did you pay this year?

A. I have not settled this year, but their bill called for $2, excepting that which I planted out this year, and that is $1.50.

X Q. 4. Do you know of any of your neighbors there getting water at $1.25 from the outside canal?

A. Now, I will not be sure, but my bill calls for $1.25 for new alfalfa. I will not be sure but it does.

861 X Q. 5. Do you know that the order passed by the board of directors of this canal company only authorized the superintendent to charge you $1.25 per acre for water?

A. No sir, I don't know anything about that.

X Q. 6. You do not know anything about that?

A. No sir.

X Q. 7. If the superintendent is only authorized to charge you $1.25, you do not know?

A. I think, now I come to think of it, that the bill presented called for $1.25 for the new alfalfa, that which was put out this year. Most of it, this last spring, was a very bad spring to get the alfalfa started.

X Q. 8. It was like last year in that respect?

A. At least, I had poorer luck this year than I did last year. I seeded, or attempted to seed, some land that was not as good as the

other land, and I lost my seed on the land. I could not get a good start.

X Q. 9. Do you remember what the bill called for last year?

A. My recollection is it was $1.50.

X Q. 10. It may have been $1.25?

A. I don't think it was.

X Q. 11. I say, it might have been, as far as your recollection now serves you?

A. My recollection is, it was $1.50. I will not say positively, though, that I am not mistaken about it, but that is my recollection.

862 Redirect examination.

Mr. TREADWELL:

R. D. Q. 1. The irrigation season for the outside canal is much shorter than the irrigation for the old canal, is it not?

A. Yes sir. Last year we got no water after the middle of July, and I did not get to irrigate any this year after the fore part of this July, though there was water there a little later than that.

R. D. Q. 2. For that reason, the company has made lower rates for the new canal than the old canal?

A. I don't know about that.

JOHN H. EDWARDS, called for the complainant in rebuttal, sworn.

Mr. TREADWELL:

Q. 1. What is your full name?

A. John H. Edwards.

Q. 2. What is your age?

A. 28.

Q. 3. Where do you reside?

A. Merced county, near Newman; south of Newman.

Q. 4. How long have you resided in that vicinity?

A. Well, my home has been there since 1881. I have probably been right there half of the time.

Q. 5. What is your business?

A. Stockman.

Q. 6. In the course of your business, do you raise any alfalfa?

A. Yes sir.

863 Q. 7. How many acres of alfalfa do you have there?

A. We have in the neighborhood of 140 acres. We pay an irrigation bill on 140 acres of land; that is practically all in alfalfa.

Q. 8. Is that irrigated from the canal of the complainant company?

A. Yes sir.

Q. 9. How long have you been irrigating that land from that canal?

A. Well, a small portion of it was seeded, I think, the next year after the canal came through.

Q. 10. In 1878?

A. In 1879 or 1880; in 1879, I think the first alfalfa was seeded, just a few acres, gradually increasing ever since, until it is practically all in alfalfa at the present time.

Q. 11. Have you ever had occasion to reseed any of it?

A. Yes, sir.

Q. 12. How long did it last before it required reseeding?

A. On an average, we reseed about every seven years.

Q. 13. You think it is most profitable to do that?

A. Well, it is something of a question in my mind as to whether it is more profitable to reseed that often, or let it go longer, for the reason that the foxtail is the cause of reseeding, as a general thing, coming in and crowding out the alfalfa. The foxtail is practically our only winter feed. What we lose on one season of the year, I think we gain on the other.

Q. 14. So that that is an open question?

A. It is an open question. It is in my mind yet.

864 Q. 15. What is the average cost of putting in an acre of alfalfa in proper shape, putting it in for irrigation?

A. $10 would cover it.

Q. 16. What is the average cost per acre per year of keeping it up—just keeping it in order?

A. I think in the neighborhood of six bits.

Q. 17. 75 cents an acre?

A. Yes, sir.

Q. 18. Per year.

A. Yes sir, that would cover it thoroughly.

Q. 19. How many tons to the acre of hay can, on the average, be cut of alfalfa?

A. I think eight tons can be cut on the average.

Q. 20. What is the cost of cutting, hauling and stacking per ton, on the average?

A. Not over $1.

Q. 21. What has been, during your experience there, the average price of alfalfa hay in the stack?

A. I could hardly say as to that. We, individually, have sold very little hay. As a general proposition, most of the hay in that section of country is fed out to stock; that is, there is more fed by the parties themselves than is sold.

Q. 22. It is generally found more profitable to do that than sell it?

A. Yes sir. We have never sold out for less than $5, to my recollection, except a few tons as an accommodation—for less than $5 in the stack.

Q. 23. Still, you have generally been familiar with prices around there?

A. Yes sir.

Q. 24. What did you say, on your best information, would
865 be about the average price for alfalfa hay?

A. I think $4 would be an average price.

Q. 25. In your own practice, you usually feed your hay to stock that you raise?

A. Yes sir.

Q. 26. You also pasture that stock on your alfalfa?

A. Yes sir.

Q. 27. You pasture between cuttings and after the last cutting?

A. Yes sir.

Q. 28. Taken in that way, on the average, how many head of stock can be kept on irrigated alfalfa by pasturing them and feeding them to the hay?

A. We figure on carrying one head of grown stock throughout the year. We can do it safely and easily.

Q. 29. Can you supply one head of beef cattle per acre per year?

A. Yes sir.

Q. 30. You can do that easily, you say?

A. Yes sir.

Cross-examination.

Mr. STONESIFER:

X Q. 1. Your business, you say, is principally stock-raising?

A. Yes sir.

X Q. 2. You find it more profitable to raise stock than sell your alfalfa for hay?

A. Yes sir.

X Q. 3. In order to ascertain how much you have made out of your stock operations, you take into consideration many things, do you not?

A. Yes sir.

X Q. 4. You would look at your bank account at the end of the year, would you not?

A. Yes sir.

866 X Q. 5. How long do you say you have been up there?

A. I have been there since 1881.

X Q. 6. Your land is very fine land, is it not?

A. Yes sir.

X Q. 7. It is as good as any below the canal?

A. I think it is.

X Q. 8. You are in what is called there the Cottonwood sink?

A. Yes sir.

X Q. 9. It is the sink of the Cottonwood creek?

A. The Las Garzas creek.

X Q. 10. It is an alluvial, light loam?

A. Yes sir, the majority of it.

X Q. 11. And is peculiarly adapted to irrigation?

A. I think so.

X Q. 12. Much better than the great majority of soils that lie below this canal?

A. I think it is.

X Q. 13. There is only a small scope of country lying below this canal that is composed of that kind of soil?

A. Yes sir.

X Q. 14. Your lands are worth $150 an acre, are they not, when

other lands are not worth more than $50 below the canal, that are irrigated to alfalfa?

A. Well, I don't know there is that difference.

X Q. 15. What difference would you say there is between your land and other lands, on the average? Take land around Newman.

Mr. TREADWELL: You mean other lands on which alfalfa grows?

Mr. STONESIFER: Yes, I mean other lands on which alfalfa grows.

867 A. I don't believe that that land is worth over $50 above the average of other land there upon which it pays to grow alfalfa.

X Q. 16. In your judgment, it is worth $50 an acre more than the average of other lands below the canal?

A. It is not worth over that. The heavy land below the canal is proving to be better than they thought years ago. The alfalfa lasts longer and produces more than they originally thought.

X Q. 17. Have you kept an account, in order to know how much you have made out of your alfalfa lands?

A. No sir, not accurately; not an accurate account, because formerly we farmed outside of the canal, raising wheat, and for a number of years the place below the canal was a sort of side issue, and the accounts of the two pieces of property were never kept separate.

X Q. 18. When you say "it was a kind of side issue," you mean it was subordinate to your other farming operations?

A. Yes sir; we did not understand the handling of it, and consequently did not make out of it near what could have been made. It is only of late years that the people generally there have made what should be made out of the alfalfa land.

X Q. 19. Taking it year in and year out, what, in your opinion, has been your profit off of this alfalfa land? I mean your profit after you have deducted all expenses of every kind and nature, interest on your investments, and everything of that kind; everything that can be considered in the capital that you have invested in that property; wear and tear of machinery; the amount you have
868 expended in the purchase of stock; the loss on your stock, and everything that goes to make up your business there.

A. I could not answer that, only with respect to the last year accurately, for this reason: that the land there is owned by my mother, and since a year ago this last August I and my partner have rented that land. Formerly it was run, as I say, in connection with this outside ranch, and I was away a great deal of the time, and my father, during his lifetime, had the real management of it; so, previous to the last year, I could not say.

X Q. 20. You say you have rented it?

A. Yes sir.

X Q. 21. What rent do you pay?

A. $1000 a year.

X Q. 22. For how much land?

A. It was originally a quarter section of land. The canal, though, for its full length, extends along the western side, the full length;

it takes off some 13 acres. There are county roads and ditches; the Las Garzas waste ditch, half of that is off of the north side of it. We pay a water bill on 140 acres. That is practically what there is.

X Q. 23. You pay $1000 per annum for that?

A. Yes sir. The water bill——

X Q. 24. You pay the water bill?

A. Yes sir.

X Q. 25. You consider that a fair rent for the land?

A. Yes sir.

X Q. 26. You consider that a good rent for it—all that it is worth?

A. Yes sir, one year with another.

X Q. 27. One year with another, taking it at a twenty-year clip, one year with another?

A. Yes sir.

869 X Q. 28. That is a fair rent?

A. Yes sir.

X Q. 29. What do you consider that land worth?

Mr. TREADWELL: You mean now?

Mr. STONESIFER: Yes.

A. As far as my knowledge goes, in the last two years, I don't think there have been any sales of land of any quality whatever, that is, not to my knowledge, for over $80. There may have been, but so far as my knowledge goes, there have not been.

X Q. 30. I mean of your kind of land. Your land is worth a great deal more than other land—your mother's land?

A. It is generally considered to be worth more.

X Q. 31. Was not your father offered at one time $150 an acre for some of it?

A. I could not say.

X Q. 32. Not very long ago—before his death?

A. Not that I know of.

X Q. 33. Has not any adjoining you been sold there for that same money, or near there—of that same quality?

A. Not that I know of.

X Q. 34. I ask for information: Is your land, the land where they raise those big blackberries and nice fruit?

A. Yes sir.

X Q. 35. You have a good deal of it, or some of it, in blackberries and fruit?

A. Not much now. There is a small orchard and vineyard; simply enough to supply our own wants. We did formerly have much more, but we spaded it up and seeded it to alfalfa.

X Q. 36. What water bill do you pay now?

A. $2 an acre.

870 X Q. 37. You have paid that for how long?

A. I guess this year and the year before. I think so. I don't know. I think it is only the last two years, as far as my recollection goes. It may have been three years. I am not positive.

X Q. 38. Do you consider $80 an acre a fair value for this land, Mr. Edwards?

A. No sir, I think the land is worth more than that.

X Q. 39. How much more, in your judgment?

A. How much is it worth? How much more than $80, do you say?

X Q. 40. Yes.

A. It is like this: I consider land worth whatever amount it will return a reasonable rate of interest on.

X Q. 41. That is it.

A. The way we use this place is, we keep it stocked, as a general proposition, with all the stock it will carry, and we trade on the outside—buy and sell. Very often we use the ranch for a short time simply to hold stock, and it is hard to estimate, because our profits are greater in that way than they would be if we simply confined ourselves to just what we could raise right on that particular piece of land itself.

Mr. FULKERTH:

X Q. 42. Cannot you give us the fair market value of the land?

A. I don't know. I think $125 is an extreme price for that land, although I would not sell it for that, or any other piece of land like it, because I can make interest on a greater valuation than that off of it. But as land sells there, and has been selling, I think
871 it would not bring any more than that; that is at the present time.

Mr. STONESIFER:

X Q. 43. It is worth that in your judgment?

A. Yes sir.

X Q. 44. You say you would not sell it for that?

A. No sir, I would not sell it for that.

X Q. 45. Would you sell it for $150 an acre?

A. I don't know that I would.

Redirect examination.

Mr. TREADWELL:

R. D. Q. 1. Do you know how much unirrigated land rents for in that vicinity per year; just as good land as yours, but not irrigated—cash rent?

A. Practically no cash rent—a fourth of the crop delivered in the warehouse.

R. D. Q. 2. But suppose it was reduced to a cash basis, how much could land be rented for—good land, but not susceptible of irrigation, how much would any person pay for it?

A. I don't know. As a general proposition, people will not take any chances on paying a cash rent, because these dry years come along and they cannot figure on them beforehand. For that reason, all the land, to my knowledge, is rented for a proportion of the crop.

R. D. Q. 3. No one would take chances on paying cash rent?
A. No sir.

Recross-examination.

Mr. STONESIFER:

R. X Q. 1. You always get all the water you want?
872 A. As an ordinary proposition, yes. About this season of the year, water is a little short. Sometimes we have to wait two weeks, or even three weeks, for it.
R. X Q. 2. You always get it, even in August?
A. We always get some.
R. X Q. 3. You always get some in September?
A. Yes sir, but it is very short in those two months.
R. X Q. 4. There is no time of the year but what you can get some water?
A. No sir, generally speaking we can.
R. X Q. 5. If you could not get any water in August and September, your estimate of the rent of that land would be different, would it not?
A. Yes, sir, it would make quite a little difference.
R. X Q. 6. So that it depends upon your getting water in August and September?
A. Well, yes, to make what we do.
R. X Q. 7. It is very essential to have water during those two months?
A. I don't know any more so than other months, except the first months in the spring, when there is still some moisture from the natural rainfall in the ground.
R. X Q. 8. There is always plenty of water in the canal in the spring for everybody?
A. Yes sir.
R. X Q. 9. There is no danger of anybody going without water in the spring?
A. I think not.
R. X Q. 10. Or in the summer up to the first of August?
A. I think not.
R. X Q. 11. When the shortage comes?
A. Yes sir.
873 R. X Q. 12. Then, during that shortage, you can usually get the water on two weeks' notice?
A. Yes sir, ordinarily.
R. X Q. 13. Ordinarily you can do that?
A. Yes sir.
R. X Q. 14. If your land was situated in Stanislaus county, and you could not do that, you would then have a different estimate as to the value of the rent of the land, would you not?
A. Naturally it would make a difference.

Further redirect examination.

Mr. TREADWELL:

R. D. Q. 1. The year before last you ran out of water, did you not, in the latter part of the summer and the fall?

A. Yes sir.

R. D. Q. 2. You were a good deal longer than two weeks without water then?

A. Yes sir; as far as my recollection goes, we were as short then as we ever have been.

R. D. Q. 3. For about two months you could not get any water?

A. Yes sir.

R. D. Q. 4. Last year you were very short?

A. Yes sir, very short last year.

Further recross-examination.

Mr. STONESIFER:

R. X Q. 1. Do you know where the water went to last year when it was so short that you could not get it for two months?

A. No sir.

R. X Q. 2. Did you ever investigate or inquire, Mr. Edwards?

A. No sir.

874 HENRY KLEHN, called for the complainant in rebuttal, sworn.

Mr. TREADWELL:

Q. 1. What is your full name?

A. Henry Klehn.

Q. 2. What is your age?

A. 55.

Q. 3. Where do you reside?

A. Near Newman, Stanislaus county.

Q. 4. How long have you resided in that vicinity?

A. Right in this place since 1879, and in the vicinity since 1868.

Q. 5. What is your business?

A. Farming and stock-raising.

Q. 6. Do you know Mr. J. T. Crow, who lives in that country?

A. Yes sir.

Q. 7. Do you remember going with Mr. J. T. Crow, some time in the fall of last year, on a visit to the head of the canal?

A. I do.

Q. 8. Who else went on that occasion?

A. Mr. Kilburn.

Q. 9. Mr. G. S. Kilburn?

A. Mr. Guy Kilburn.

Q. 10. Do you remember the date of that visit, Mr. Klehn?

A. As near as I recollect, it was September 23rd that we started; as near as I recollect; that is within a day or so.

Q. 11. When you started from the vicinity of Crow's Landing?
A. Yes sir.
Q. 12. Did you stop at Los Banos on your way up?
A. We stopped there for lunch.
875 Q. 13. How long did it take you on your trip to get to the head of the canal?
A. We went up to Firebaugh the first day. The next morning we went up to the headgate, and stayed there all day in that vicinity, crossed the river, and came back to Firebaugh that night, on the other side of the river.
Q. 14. So that, according to your best recollection, you were at the headgate on September 24th?
A. Yes sir, it was on Friday; whether it was the 24th, or the 23rd, or the 25th, I could not say.
Q. 15. It was Friday?
A. Yes sir, it was on Friday. It was within a day of the 24th, if it was not the 24th.
Q. 16. Do you raise any alfalfa; Mr. Klehn?
A. I raise some.
Q. 17. About how much?
A. I have a great many acres, but not so much alfalfa.
Q. 18. I mean in alfalfa—what you call alfalfa.
A. That is what I say; I don't raise very much.
Q. 19. How many acres have you in alfalfa?
A. Well, that is another question that is very hard to answer. This year I gave up 60 acres that were dried out, that I have not irrigated on this irrigation season, because I did not get the water last year, therefore it dried out. I have only got about between 60 and 70 acres left now.

Cross-examination.

Mr. STONESIFER:

X Q. 1. Why did it dry out last year?
A. I did not have the water.
876 X Q. 2. You could not get the water on?
A. No sir.
X Q. 3. You lost that?
A. Yes sir—when I say I did not get the water, I did get water, but when it was too late; it was dry; two-thirds of it was dry. I tried to revive it when the water came, but could not make a success of it.
X Q. 4. How far do you live from the terminus of the canal?
A. That is, the lower end?
X Q. 5. Yes.
A. From 8 to 10 miles.
X Q. 6. How far are you below Los Banos?
A. About 23 or 24 miles; something like that. I don't know the exact distance.
X Q. 7. When you went over the canal last year, where did you find the water going to?

Mr. TREADWELL: I object to the question as not being cross-examination. If counsel wishes to make Mr. Klehn their own witness for that purpose, I have no objection. I have only asked him about the date of that visit to which Mr. Crow testified.

The WITNESS: Do you wish me to answer?

Mr. STONESIFER:

X Q. 8. Yes.

A. What condition we found the water in?

X Q. 9. Where was the water going to when you went over the canal last September?

A. We went up to the headgate, and I measured the water in the headgate, and found, according to my measurements, there was about 275 cubic feet of water per second passing through the headgate at that time.

X Q. 10. Going through the headgate?

877 A. Yes sir. We crossed the river at the dam, where they were building a dam there, and went over to the other side to the Columbia ranch.

X Q. 11. You mean the east side of the San Joaquin?

A. Yes sir.

X Q. 12. This canal is on the west side of the San Joaquin?

A. Yes sir, we found a canal there. I termed it the Columbia canal. It is near the Columbia ranch. I don't know what it is called.

X Q. 13. The canal of this pastoral company.

A. No sir, I think not.

Mr. TREADWELL: He refers to the canal that is commonly called the Columbia canal. I don't know it has any special name, but it is generally called that in that country.

A. I found in that canal about 90 cubic feet of water, per second.

Mr. TREADWELL: Permit me to ask a question just there.

Q. Where that Columbia canal takes out of the river is above the head of the San Joaquin canal?

A. Yes sir.

Mr. STONESIFER:

X Q. 14. There was a canal built there after this present canal?

A. I don't know. I understood there was, but I don't know. You will have to ask somebody else. They were irrigating on that side on the Columbia ranch with the water.

X Q. 15. Do you know who owned that Columbia ranch?

A. Mr. Miller, I understand.

X Q. 16. You mean Miller & Lux?

A. Yes sir.

X Q. 17. They were taking the water out on that side 90 feet?

878 A. Yes sir.

X Q. 18. What else did you discover?

A. The condition of the ground showed a luxuriant growth of

alfalfa all through. The ranch is a fine alfalfa ranch, and it appeared as if irrigated right along there.

Mr. TREADWELL: I object to any evidence as to the land or water on the other side of the river, as immaterial and irrelevant.

Mr. STONESIFER: You traced Mr. Klehn up the canal to its headgate investigating this water business.

Mr. TREADWELL: I object to all this as not being cross-examination. I simply called this witness as to the date.

Mr. STONESIFER:

X Q. 19. Did you find anything else in your investigation?

Mr. TREADWELL: Objected to upon the same ground, not being cross-examination.

A. We returned to Firebaugh that night, stopped there that night, came down the canal, and endeavored to take notes where we could what became of the water. In the ditch near Firebaugh we measured the current and the capacity of the ditch, and found that it carried 110 feet of water per cubic foot per second, that was diverted at Firebaugh into this side ditch.

Mr. STONESIFER:

X Q. 20. The side ditch?

A. That is a ditch that goes down by the river. They told us it went to the Santa Rita.

X Q. 21. That is Miller & Lux's ranch?

A. I think so. I think that is the name of it, where the ditch went to. The balance went down in the main canal.

879 X Q. 22. You say 125 feet?

A. 110 feet. I endeavored to try and get another measurement further down near the Dos Palos ranch. It was not successful, and I did not take notice of it. There was a levee there, and it was not satisfactory, so I did not take note of it. I took no further measurements below there.

Mr. STONESIFER: If there is anything in the cross-examination of Mr. Klehn that is not proper examination, we make him our own witness.

Mr. TREADWELL: You have got to state what you make him your witness for.

Mr. FULKERTH: We make him our witness on the entire cross-examination. It will be our testimony-in-chief, and is subject to cross-examination by Mr. Treadwell.

Cross-examination.

Mr. TREADWELL:

X Q. 1. What experience have you ever had in measuring water?

A. I have had some experience.

X Q. 2. You are not an engineer, are you?

A. I do not claim to be an engineer.

X Q. 3. Just answer the question. You are not an engineer?

A. As an engineer, I would not stand an examination.
X Q. 4. You never have had any instruction in that?
A. Yes sir.
X Q. 5. What instruction?
A. In common school, navigation and so on.
X Q. 6. Such instruction as you get in the common schools?
880 A. Yes sir.
X Q. 7. How did you measure this water when you say you found 275 feet per second running into the head of this canal?
A. I measured the depth of the water, the width of the current, and I measured the velocity of the current.
X Q. 8. How?
A. By a log.
X Q. 9. Is that all you did?
A. Yes sir.
X Q. 10. That was the same kind of measurement that you made at the other places?
A. Yes sir. Now, I wish to state——
X Q. 11. That is all.
A. (Continuing:) This log is the old log that we use in navigation, in measuring the speed of the vessels, the same as the current.

HENRY L. COOMBS, called for the complainant in rebuttal, sworn.

Mr. TREADWELL:

Q. 1. What is your full name?
A. Henry L. Coombs.
Q. 2. What is your age?
A. I am about 52 years old.
Q. 3. Where do you reside?
A. I live in Merced county, near Ingomar.
Q. 4. How long have you lived in that vicinity?
A. About seven years.
Q. 5. What is your business?
A. I am a rancher.
Q. 6. Do you raise any alfalfa?
A. Very little.
881 Q. 7. How many acres of alfalfa have you got?
A. I have got about 20 or 15, that is, which is irrigated from the canal.
Q. 8. That is irrigated from the canal of this company?
A. Yes sir.
Q. 9. Are you acquainted with the raising of alfalfa among your neighbors?
A. I have been an observer of it for a good many years.
Q. 10. On an average, taking that country through, how many tons of alfalfa hay can be cut per year off of an acre of irrigated alfalfa?
A. Well, it is owing to the soil.
Q. 11. I mean average soil.
A. On good, average land, I should say 8 tons.

Q. 12. How much does it cost to cut, haul and stack it?
A. I think $1 an acre will cover all the expenses, easily.
Q. 13. $1 an acre?
A. $1 a ton, I should say.
Q. 14. How much does it cost to keep the land in order?
A. Well, that, of course, is owing a little to the soil. Some soil costs a little more than others.
Q. 15. Average land?
A. I should think from 25 to 50 cents an acre would be a fair average estimate per annum.
Q. 16. How long, in your experience, will a stand of alfalfa last before it needs resowing?
A. There is some alfalfa in that neighborhood I think has been down 15 years.
Q. 17. And maintaining its condition?
882 A. Yes sir, and is still pretty good. I think it is a question as to whether it is best to leave it down so long, because it generally yields better after it is plowed up and sowed again.
Q. 18. In your judgment, how often ought it to be plowed up and reseeded?
A. In order to get the very best results, once in ten years.
Q. 19. How much does it cost to put in an acre of alfalfa on average land, in good shape?
A. It costs from $6 to $8.
Q. 20. How much does it cost per acre per year to put the water on the land, that is, the cost of irrigation, not the paying for the water?
A. I think about $1 per acre per annum or nearly so.
Mr. STONESIFER: No questions.

WILLIAM HENRY DEVOE, called for the complainant in rebuttal, sworn.

Mr. TREADWELL:

Q. 1. What is your full name?
A. William Henry Devoe.
Q. 2. What is your age?
A. 72½.
Q. 3. Where do you reside?
A. At Los Banos.
Q. 4. How long have you lived in that section of the country?
A. Ten years.
Q. 5. What is your business?
A. Raising alfalfa.
Q. 6. How many acres of alfalfa have you?
A. 4½.
883 Q. 7. Is that country irrigated from the canal of the company?
A. Yes sir.
Q. 8. What do you use that alfalfa for?
A. For sale.

Q. 9. Selling hay?
A. Yes sir.
Q. 10. How many tons of hay do you find you are able to cut per acre per year?
A. On the 4½ acres, it will average 32 tons for the season.
Q. 11. Is that land average land, or better or poorer than average land?
A. From what they tell me, it is better.
Q. 12. Rather better than the average land?
A. It is considered choice.
Q. 13. Are you acquainted with the crops generally in that country?
A. No sir, I am not.
Q. 14. Only about your own?
A. Only about my own.
Q. 15. What has been the average price that you have been able to get for your hay in the stack?
A. For the last 8 years, putting it all together, $3.50, taking all expenses out.
Q. 16. That is net price?
A. Yes sir.
Q. 17. How much have you been able to get for it, not taking anything out?
A. For 3 years I have got $4 per ton; for 3 years I have got $5, and for the next year I got $6 a ton. Last year I got $8 a ton, and this year I got $3 a ton. Now you can make it out.

884 Cross-examination.

Mr. STONESIFER:

X Q. 1. How much did you pay for your land?
A. $125.
X Q. 2. $125 an acre?
A. Yes sir.
X Q. 3. When?
A. About 10 years ago.
X Q. 4. How did you pay—cash?
A. Yes sir.
X Q. 5. Have you got a bank account today?
A. A small one.
X Q. 6. How much?
A. $600.
X Q. 7. In 10 years?
A. I had some before.
X Q. 8. I want to get at the facts.
A. Go on and ask your questions.
X Q. 9. How much did you have before you bought this land?
A. As near as I can recollect, $225, and I have now got $600 in bank—$679.
X Q. 10. Then you have accumulated about $350 in 10 years?

A. You take what I first had away from there. I have now got $679 in bank.

Mr. FULKERTH:

X Q. 11. Out of that $679, you had $200 before?
A. Yes sir.
X Q. 12. So that you have made $479 in 10 years?
A. Exactly.

Mr. STONESIFER:

X Q. 13. Made it all off of this 4½ acres?
A. Yes sir.
X Q. 14. Is it all in alfalfa?
A. Yes sir.
X Q. 15. Have you cattle or anything else?
A. Nothing. I used to keep a cow. I don't keep anything now, only for alfalfa.
885 X Q. 16. How long ago was it when you bought it?
A. 10 years. I have only had it in alfalfa 8 years.
X Q. 17. I did not catch the time when you bought it?
A. It is 10 years ago now.
X Q. 18. It would be about $40 a year that you have made clear off of that piece of land?
A. No sir, I have made more than that.
X Q. 19. A little over $40 a year.
A. It comes to more than that. I will tell you. Three years at $4 an acre. There are 32 tons every year, and then twice $5, once $6, once $8, and once $3. You can make the average by counting out the expenses.

Mr. FULKERTH:

X Q. 20. After 10 years' cultivation of this land——
A. 8 years.
X Q. 21. —you have a bank account of $679?
A. Yes sir.
X Q. 22. That is profit?
A. Yes sir.
X Q. 23. Of this $679, you had $200 in cash before?
A. Yes sir.
X Q. 24. So that your actual profit during that 8 years would be $479. Is that correct?
A. That would be pretty nearly correct.
X Q. 25. You cannot say it is any more than that?
A. No sir.
X Q. 26. After you paid all your expenses, you have got that much profit left; after 8 years of cultivation on the land, in cultivation for alfalfa?
A. Yes sir.

Mr. STONESIFER:

X Q. 27. In other words, it has been a net income to you of about 8 % on your investment?

886–894 Mr. TREADWELL: I object. The witness is not to make an arithmetical calculation for counsel. I object to it as irrelevant and immaterial. It is a mere matter of computation.

A. That list will tell exactly. There are the profits, and there is what it comes to, and there is the taxes and the land, what the land cost and what it takes to keep it up.

Mr. STONESIFER:

X Q. 28. According to your figures, that is about 8 % on your investment?

Mr. TREADWELL: I object to the question. That is a matter of computation merely.

A. Yes sir, that is what I calculate. Part of the time it would be 15 or 20. Now it is less.

Mr. STONESIFER:

X Q. 29. That is only a fair and reasonable rate of interest on your investment?

A. Yes sir. You can tell by making an estimate.

X Q. 30. I can make the calculation.

A. And count the expenses out every year, excepting one thing, the irrigation. I have counted nothing for irrigation. That is worth about $4 to irrigate it a year.

Redirect examination.

Mr. TREADWELL:

R. D. Q. 1. You have had your living off the land all the time? You paid for your living?

A. I am not in debt.

* * * * * * *

895 GUY KILBURN, called for the complainant in rebuttal, sworn.

Mr. TREADWELL:

Q. 1. What is your full name?

A. Guy Kilburn.

Q. 2. What is your age?

A. 63.

Q. 3. Where do you reside?

A. Stanislaus county, near Newman.

Q. 4. What is your business?

A. Farming and stock-raising.

Q. 5. How long have you been engaged in that business in that vicinity?

A. I went there in the fall of 1868.

896 Q. 6. Do you raise any alfalfa?

A. Yes sir.

Q. 7. How many acres of alfalfa, on an average, have you had there?

A. During that time?

Q. 8. Yes; that is since you have raised alfalfa?

A. I have more now than I did when I started in.

Q. 9. How much have you now?

A. About 300 acres.

Q. 10. When did you first sow any alfalfa there?

A. It was about the time that the canal came down there.

Q. 11. You did not sow any before that time?

A. No sir, but I think the first year or so after the canal was built.

Q. 12. About how much did you sow at first?

A. I think about 50 acres.

Q. 13. Then you gradually increased it until you have your present quantity?

A. Yes sir.

Q. 14. In your experience, about how long does a stand of alfalfa last before it needs reseeding?

A. I have not reseeded any yet, but I know there is plenty of it that should be reseeded. I think about 10 years.

Q. 15. Taking the average of land around that country, how much an acre does it cost to put in a crop of alfalfa in good shape, as a good farmer would do it?

A. I think about $10 an acre.

Q. 16. How much will it cost to keep it up, keep it in as good shape as when it was put in, in a year?

A. It cost about $1 per acre.

Q. 17. Do you cut any alfalfa for hay?

A. Yes sir.

Q. 18. Have you been in the habit of doing that more or
897 less since you have been in the business?

A. Yes sir.

Q. 19. Taking your own land on the average, how much hay can you cut per acre per year, cutting all you can?

A. About 7½ tons.

Q. 20. How is it with the average of land around your country, the average of alfalfa land; how much usually can you produce for hay?

A. I guess the average is about the same as other land.

Q. 21. Your land you think, is average land?

A. Yes sir.

Q. 22. How much does it cost to cut, haul and stack the hay per ton, and get it in condition in which it can be sold?

A. We calculate about $1 per acre.

Q. 23. $1 per acre?

A. $1 per ton.

Q. 24. What has been the average price at which you could sell hay there in the stack; say for the last 10 years?

A. We very seldom sell any hay.

Q. 25. You are acquainted with current prices there are you not?

A. I think $4 would be about an average price.

Q. 26. About what do you consider your alfalfa land worth, if it is a fair question?

A. I don't know.

Q. 27. Do you know how much it is assessed for, that is, do you remember?

A. No sir, I do not. It is either $35 or $40. I could not say.

Q. 28. Somewhere in that neighborhood?

A. Yes sir.

Q. 29. How much does it cost on the average to irrigate? You understand, I am excluding the cost of the water, but the cost of putting the water on the land?

898 A. Applying the water?

Q. 30. Yes.

A. It would cost about six bits a year on my land.

Q. 31. Per acre?

A. Yes sir.

Cross-examination.

Mr. STONESIFER:

X Q. 1. Mr. Kilburn, when did you go on to your present place?

A. In the fall of 1868.

X Q. 2. How much land is there in your farm?

A. 1020 acres.

X Q. 3. Does it all lie below the canal?

A. Yes sir.

X Q. 4. When was the canal built through there so as to be able to irrigate your land?

A. I don't remember the year.

Mr. TREADWELL: It was in 1878.

Mr. STONESIFER: I want to refresh his memory.

X Q. 5. It was about 1878?

A. Somewhere about that.

X Q. 6. About 20 years ago?

A. Yes sir.

X Q. 7. So that you have been irrigating some of your land for the last 20 years?

A. Yes sir, I guess I have.

X Q. 8. About how much have you been irrigating for the last 20 years?

A. I guess 150 acres; that length of time.

X Q. 9. What have you done with the balance?

A. Raised grain on it.

X Q. 10. You have cultivated that just as land is cultivated that is not irrigated?

A. I have irrigated it some, some portion of it, for grain, at times; that is, I used to.

899 X Q. 11. You have had a great deal of experience there have you not, in irrigated land?

A. Yes sir.

X Q. 12. From your experience, is there any great profit in culti-

vating that land and applying it and irrigating it under the present system?

A. I am not prepared to answer that. Our business has been mixed up so with outside farming and inside, irrigating, and one thing and another, that I could not segregate the business at all to answer the question.

X Q. 13. Could you not say from your financial affairs whether or not you have made any money in the last 20 years off of that any more than you otherwise would if it had not been irrigated?

A. I don't think I have.

X Q. 14. Then, as far as your experience goes, Mr. Kilburn, the irrigating of your land has not been of any great value to you?

A. I know that I have not got the means that I had 20 years ago.

X Q. 15. And you are still farming the same land you had 20 years ago?

A. Yes sir.

X Q. 16. In fact, could you not say that you have not as much; that your financial condition is not as good as it was 20 years ago, before the canal came through there?

A. Yes sir, I can say that.

X Q. 17. You say that?

A. Yes sir.

X Q. 18. In other words, you are owing more now than you did then?

A. Yes sir.

X Q. 19. More than you did 10 years ago?

A. Yes sir.

900 Redirect examination.

Mr. TREADWELL:

R. D. Q. 1. When did you put in your last sowing of alfalfa?

A. Last spring.

EDWARD W. CROW, called for the complainant in rebuttal, sworn.

Mr. TREADWELL:

Q. 1. What is your full name?

A. Edward William Crow.

Q. 2. What is your age?

A. 43.

Q. 3. Where do you reside?

A. Near Newman, Stanislaus county.

Q. 4. How long have you resided in that vicinity?

A. Since the fall of 1877.

Q. 5. What is your business?

A. Farming and stock-raising.

Q. 6. Do you raise any alfalfa?

A. Yes sir.

Q. 7. How long have you been raising alfalfa?

A. I put alfalfa in, I think, in 1884.

Q. 8. And how much alfalfa have you in now?

A. I sold that place. I stayed on that place 10 years, and then sold it. I have had two places since then.

Q. 9. Had alfalfa on each of them?

A. Yes sir.

Q. 10. How much alfalfa have you now?

A. I sowed 40 acres last spring. There is only about 5 acres of it that is a good stand; the rest I will have to resow.

901 Q. 11. At the present you have no old alfalfa at all?

A. The alfalfa I sowed in 1884 is there yet. Other parties own it now. I sold it.

Q. 12. How long ago did you sell it?

A. Three or four years ago.

Q. 13. You had it for quite a number of years?

A. I had it for 10 years.

Q. 14. Was that land irrigated from the canal of this company?

A. Yes sir.

Q. 15. Did you put in that alfalfa yourself on that place?

A. Yes sir.

Q. 16. How much did it cost you per acre to put it in?

A. Do you mean fencing and all?

Q. 17. Everything that was necessary, whatever you spent to put in the crops, fence the land and everything.

A. There is a heap of difference in fencing, whether you put a hog fence or cattle fence.

Q. 18. I understand.

A. If you put a good hog fence outside of the fence——

Q. 19. Leave the fence out for the present. How much did it cost to fix the land, sow it and get a stand?

A. $6 to $7. This piece that I sowed this spring, I can give you the exact figure on, if you want it.

Q. 20. Give us that. That will be very good.

A. The seed cost me 10½ cents right here in San Francisco. I sowed about 25 pounds. You can figure it up as you go along. The freight on it—I don't know what that would be exactly, about a third of a cent a pound, and it cost me to level the land—

902 the land was checked before, and I had to recheck a lot of it and level it.

Q. 21. It was not done to your satisfaction when you took it?

A. The checks were put through, and did not follow the level. It did not all irrigate. It was checked about ten years ago for wheat, so I had to recheck it over again and level it.

Q. 22. That cost about as much as if you checked it in the first place?

A. I used some of the checks, most of the old checks; but, in order to irrigate it, I had to pull up the high places and put them in the low places.

Q. 23. How much did that cost you?

A. After it was checked, to go over and recheck it again, I think it must have cost me $4 or $5 to do the rechecking—after it had been checked in the first place.

Q. 24. Suppose you had to do all the work from the beginning. How much do you think would have been a fair estimate of the entire cost of preparing the land, on an average?

A. That piece I had—it is not all alike—that piece was a little bit knolly—I think it would cost me $6 or $7, if I started in from the start to check it and ditch it without sowing it.

Q. 25. What would be the usual cost of the rest of the work?

A. We have got the alfalfa seed there now.

Q. 26. The cost of putting it in?

A. It cost $1.50 an acre to plow it in those checks.

Q. 27. By "plowing" it, you mean plowing and harrowing the seed in?

A. No sir, just plowing alone.

Q. 28. How much does seeding and harrowing cost?

903 A. It had to be harrowed about three times. It cost six bits an acre. I think that is about a fair estimate. Then it had to be rolled and clog-meshed, about two bits.

Q. 29. About 25 cents an acre?

A. I thought that would be about right. Now you have got the seed, the plowing, the harrowing, and the rolling. I have got to go over that same operation again.

Q. 30. That we will leave out. I will ask you, by the way, the reason why you did not get a stand was, insufficiency of water, a bad season.

A. What I sowed first was before the 15th of March. The rain brought that up pretty good. What I sowed after that, there was no rain; there was only one little shower, and that was so late that it did not get a stand. I irrigated it afterwards to try and make it come, but it was a failure, and I will have to resow it again.

Q. 31. That would not have happened if you had irrigated it instead of depending on the rain?

A. I irrigated it too, and followed it up close, as close as I could get. Several of my neighbors were in the same way. Walter Nevers sowed a piece, and did not get a stand on it.

Q. 32. Is there any other item of cost that you have not mentioned?

A. I think not. That is easily figured.

Q. 33. I do not care about figuring. We have got the items, and can figure it up at our leisure. From your experience, after you once get a stand, how much does it cost an acre per year to keep it in order?

904 A. I think in the neighborhood of $1. The ditches wash a good deal, and there is a good deal of wear and tear on the boxes.

Q. 34. That would be an average expenditure?

A. Yes sir, I think it would.

Q. 35. How much does it cost usually to apply the water to the land in irrigation? What does that cost, season for season, by the acre?

A. About six bits, I should think.

Q. 36. Taking the average land in that part of the county, how much hay can be cut per year, if you cut all that can be cut?

A. I can give you an instance of my near neighbor, right across the fence from me this year, exactly if you want it.

Q. 37. That would not answer my purpose now. I want to know, on an average, in a good many series of years, what a farmer can expect to get in a good many seasons, taking them all together.

A. In a good many years, when there is plenty of water, you can raise more than in a dry year, like this year and last year. When water is scarce, they often do not get the least crop of hay. They lose the crop because they do not get the water. This year a good many will not get the least crop of hay because they did not have water, and last year was about the same thing.

Q. 38. Taking the average, taking a period of ten years, so that will take in good seasons and bad seasons, taking fair average land, what would be the average amount of hay that could be cut from it?

905 A. The land that I had there was not the best and was not the poorest. I don't believe we cut over 6 tons a year off of that.

Q. 39. On an average?

A. Yes sir.

Q. 40. Other pieces of land near you have cut a great deal more than that, have they not?

A. Mr. Edwards's land, and the land on those creeks, is a great deal better. It raises more than the land where I was.

Q. 41. You have farmed other lands yourself around there that will raise more than 6 tons per acre?

A. I was always unlucky and did not get the best land.

Q. 42. You farmed Tom Crow's land?

A. Yes sir, I farmed that. That was good land.

Q. 43. You got more than 6 tons to the acre?

A. I farmed that to wheat.

Q. 44. That land does not produce 8 tons to the acre, on the average?

A. They do with the water. If the water is short, that cuts them short of crop.

Q. 45. Of course. How much does it cost usually to cut and stack the hay, and get it in a marketable condition?

A. About $1.

Q. 46. $1 a ton?

A. Yes sir.

Q. 47. What has been the average price down in that part of Stanislaus county in the stack?

A. In a good year, when hay is very low, I have known it to sell as low as $2.00 and $2.50.

Q. 48. I am not asking for particular instances. I want to get an average price that will take in good years and bad years, all

906 kinds of years.

A. I should think $3.50; maybe a little more.

Q. 49. You are one of the gentlemen who signed the petition to

the supervisors of Stanislaus county, to fix the rates of this company?

A. I think I did.

Q. 50. I see your name appears there.

A. I guess it is there. I would have signed it if I had a show.

Cross-examination.

Mr. STONESIFER:

X Q. 1. Is there any danger of a man getting rich raising alfalfa on the west side below this ditch?

A. I have got rich the wrong way. I went down there with considerable money, and I quit broke.

X Q. 2. You farmed exclusively on this irrigated land, did you not?

A. I stayed for 10 years on one place.

X Q. 3. You bought the land originally?

A. Yes sir, and fenced it and put it in alfalfa.

X Q. 4. You bought it very reasonably, too, in early days?

A. I bought it for $35 an acre.

X Q. 5. That was considered very reasonable, was it not?

A. Yes sir.

X Q. 6. You say you got broke on raising alfalfa?

A. I have not got any money now. I raised mules and things, but when I came to sell them they were not worth anything.

X Q. 7. You tried that for 10 years, and got broke on it, did you?

A. Yes sir.

X Q. 8. How far is your place from Mr. Kilburn's—this
907 place that we are speaking of, where you lived for 10 years?

A. About 3 miles, I think, nearly south.

X Q. 9. And the place you are living on now is where?

A. Within a half a mile of the original place where I lived on, right near it.

X Q. 10. How much have you got there?

A. 40 acres.

X Q. 11. What place is that known as?

A. It lays right east of Armistead's—between Armistead's and Hill's Ferry. It adjoins Armistead's on the east, and Baker's is north of it.

X Q. 12. Are you renting it?

A. I bought it of my sister.

X Q. 13. Before buying it you lived on another place down near Crow's Landing?

A. Yes sir.

X Q. 14. Did you give that up?

A. I sold that.

X Q. 15. How long did you live there?

A. Two or three years.

X Q. 16. That is alfalfa land, too?

A. I sowed that in alfalfa.

X Q. 17. Did you make any money there?

A. Alfalfa did not grow as good there as it did on the place where I stayed ten years.

X Q. 18. You tried it three years there, and did not make anything?

A. The alfalfa grew there, but it grew so slow, and made so little, that there was not much in it.

X Q. 19. So you abandoned it?

A. I sold it and thought I would better myself by changing.

X Q. 20. And you went to the place where you are in now?

908 A. Yes sir.

X Q. 21. Taking it year in and year out, can any money be made on the west side in farming to alfalfa?

A. If you have that good land, like Mr. Edwards is speaking about, there is some money in it. Taking that poor land, there is very little money in it. You pay just as much water bills on the poor land as you do on the good land, and it only produces half as much.

X Q. 22. And the expenses are just as great?

A. And the water bills just the same.

X Q. 23. And all other expenses just the same?

A. A great deal more. It takes harder work to put it in than it does with this good land.

Redirect examination.

Mr. TREADWELL:

R. D. Q. 1. The piece of land you had for ten years, what did you do with that when you left?

A. Sold it for [illegible] an acre.

Recross-examination.

Mr. STONESIFER:

R. X Q. 1. You say you paid $35 originally for it, and spent considerable money in improvements there?

A. I fenced it. I put a windmill up; put a good deal of improvements on it, and I did not get my money back hardly.

909 FRANK WINTER, called for the complainant in rebuttal, sworn.

Mr. TREADWELL:

Q. 1. What is your full name?

A. Frank Winter.

Q. 2. What is your age?

A. 44.

Q. 3. Where do you reside?

A. Crow's Landing.

Q. 4. Stanislaus county?

A. Yes sir.

Q. 5. How long have you resided there?

A. I have resided there at the present place since the fall of 1885.

Q. 6. You have lived in that vicinity longer than that, have you not?

A. Yes sir, two or three years.

Q. 7. What is your business?

A. I have been a farmer and stock-raiser.

Q. 8. Have you any land that you irrigate from the complainant's canal?

A. Yes sir.

Q. 9. Do you raise any alfalfa on it?

A. Yes sir.

Q. 10. About how much alfalfa have you been having?

A. On an average, about 100 acres.

Q. 11. Did you put in that alfalfa yourself?

A. Yes sir.

Q. 12. Can you say what the average cost of putting in a crop of alfalfa is?

A. Yes sir, about $6 or $7 an acre, where everything is favorable.

Q. 13. About how long will a stand last, judiciously managed?

A. Eight or ten years.

Q. 14. How much does it cost to keep up that stand per acre per year, to keep it in order?

910 A. In shape to irrigate, you mean?

Q. 15. Yes. I am only referring to irrigated land all the time.

A. I should judge four to six bits an acre.

Q. 16. How much hay can you cut off the average land in that vicinity per acre per year?

A. About 7 tons.

Q. 17. And how much does it cost to cut, haul and stack it?

A. About $1.

Q. 18. How much would it sell for, an average price, in the stack?

A. About $4.

Q. 19. And how much does it cost to irrigate, exclusive of what you pay the company for the water?

A. Four bits an acre.

Q. 20. After you have cut all the hay that can be cut, there is still pasturage left?

A. Yes sir.

Q. 21. It can be pastured for several months?

A. It can be pastured until frost.

Q. 22. On an average, about how much would that pasturage be worth per acre?

A. It would be worth $1 an acre at least, I should think.

Q. 23. For the whole season?

A. After we have done haying.

Q. 24. About how many months can you pasture after the last cutting?

A. About two months; that is, the alfalfa only grows about two months.

Q. 25. You think you would not get three months' pasturage?
A. You get some other feed with it.
Q. 26. I mean on the land, would you not get three months' pasturage?
911 A. You can pasture it all the winter, as far as that is concerned.
Q. 27. You would not do it. As you usually do, do you not usually pasture in October and November and March?
A. Yes sir.
Q. 28. That would be three months?
A. Yes sir.
Q. 29. Is that not worth $3 an acre?
A. I don't hardly think it is.
Q. 30. Are you quite sure how much it is worth?
A. I would not say for sure how much it is worth.
Q. 31. Do you remember testifying in the suit brought by Mr. T. H. Crow, against the San Joaquin & King's River Canal & Irrigation Company, in the superior court of Stanislaus county?
A. Yes sir.
Q. 32. You testified as a witness for Mr. Crow upon that occasion?
A. Yes sir.
Q. 33. Did you not upon that occasion testify as follows: "December, January and February are so cold, it don't grow, but in "October, November and March, a good deal of feed grows, and "during those three months, when it is good, it is worth, I should "judge, $1 an acre for pasturage for a month, making $3 an acre "for the season."

Mr. FULKERTH: We object unless the testimony is shown the witness.

Mr. TREADWELL: I asked the witness whether he did not so testify.

A. I would not be sure about that.
Q. 34. You do not remember about that?
A. No sir.
Q. 35. You would not say you did not so testify?
A. No sir.

912 Cross-examination.

Mr. STONESIFER:

X Q. 1. You say you have been over there since 1885?
A. Yes sir.
X Q. 2. You have got a good farm?
A. Yes sir, pretty fair.
X Q. 3. How much did you pay for it?
A. I inherited it.
X Q. 4. Your father gave it to you?
A. Yes sir.
X Q. 5. You have been principally in the stock business there?
A. Yes sir.
X Q. 6. You say you have got some in alfalfa?

A. Yes sir.

X Q. 7. Since you have been operating this land in alfalfa, have you made any money?

A. No sir, I have not.

X Q. 8. Have you lost any money?

A. Yes sir.

X Q. 9. About what have you lost in that time?

A. I have lost 140 acres of land. I am just about where I was 14 years ago, and I am out that much land.

X Q. 10. How much is that land worth?

A. I have sold 55 acres of it for $90 an acre, and the balance for $55 an acre.

X Q. 11. So that, taking it year in and year out, there is nothing to be made much in the alfalfa business, is there?

A. I have not made any—I have had alfalfa and grain, both—I have not made any money taking the two together.

X Q. 12. That has been your experience?

A. Yes sir.

X Q. 13. Alfalfa is run to stock principally?

A. Yes sir; I never cut much hay there. I have stock most of the time.

913 X Q. 14. That is the use to which alfalfa is put in that country?

A. Yes sir.

X Q. 15. Stock?

A. Yes sir.

X Q. 16. That is a stock country, below the canal?

A. Yes sir.

X Q. 17. People raise alfalfa there for the purpose of feeding it to their stock?

A. Yes sir.

X Q. 18. The sales of hay that are made there occasionally are only occasional sales, are they not?

A. Yes sir, I think so.

X Q. 19. But taking it year in and year out, for a long term of years, 10, 15 or 20 years, is there any great profit to be made there?

A. Well, it has not been so in the last 20 years, to my knowledge.

X Q. 20. And at the rate of $2.50 per acre for water, the loss would still be greater on the farmer, would it not?

A. Yes sir, I suppose so.

X Q. 21. In fact, would it be possible for a farmer in that community there to pay $2.50 an acre for water, and prosper?

A. I think it is a little too high.

X Q. 22. The question is, could he pay that and prosper?

Mr. TREADWELL: I object to the question upon the ground that it is a conclusion, and not a statement of fact.

A. I don't know but a few that have prospered.

Mr. STONESIFER:

X Q. 23. You say "but few." Can you name any?

Mr. TREADWELL: I object to the question as immaterial
914 and irrelevant.

A. Yes sir.

Mr. STONESIFER:

X Q. 24. That have prospered?

A. Yes sir.

X Q. 25. Considering the fair income on the value of that property?

A. Take a man that has got a small ranch and doing his own work, he could get along; but if he has to hire help to do all his work, he comes out at the small end of the horn.

X Q. 26. It is only a man who has such a ranch, where he can do all his own work, that can make anything?

A. He can get along that way.

X Q. 27. He is the only kind of a man that can make anything?

A. Yes sir, so far.

Redirect examination.

Mr. TREADWELL:

R. D. Q. 1. Those remarks that you made a while ago relate to all kinds of farming. It is just the same in other kinds of farming?

A. Yes sir.

R. D. Q. 2. As a matter of fact, you have raised more grain than alfalfa?

A. Yes sir.

R. D. Q. 3. You raised mules?

A. Yes sir.

R. D. Q. 4. And lost a whole lot of money on them?

A. I lost money on them all right.

R. D. Q. 5. You were one of the gentlemen who signed this petition to the supervisors of Stanislaus county?

A. Yes sir.

915 CASPAR SCHMIDHUBER, called for the complainant in rebuttal, sworn.

Mr. TREADWELL:

Q. 1. What is your name?

A. Caspar Schmidhuber.

Q. 2. What is your age?

A. 37.

Q. 3. Where do you reside?

A. On the headgate of the canal, near Mendota, Fresno county.

Q. 4. You are in the employ of the canal company?

A. Yes sir.

Q. 5. As keeper of the headgate?

A. Yes sir.

Q. 6. How long have you been employed in that capacity?

A. I have been employed since the 18th day of April, 1898.

Q. 7. During all the time you have been there, there has been a gauge showing the height of the river where the canal leaves it, has there not?

A. Yes sir.

Q. 8. Has it been a part of your duty to keep the daily record of the height of the water upon that gauge?

A. Yes sir.

Q. 9. Have you that record with you?

A. Yes sir.

Q. 10. Please produce it.

A. There it is (handing).

Q. 11. Was that record kept in your handwriting?

A. Yes sir.

Q. 12. Did you make each entry upon that at the time of reading the gauge?

A. Yes sir.

Q. 13. Was that correctly done?

A. Yes sir.

Q. 14. In every instance?

A. Yes sir.

Q. 15. This gauge is right at the headgate, and attached to
916 the headgate?

A. Yes sir.

Q. 16. It shows the height of the water as it runs into the canal?

A. Yes sir.

Q. 17. The height of the water in the canal at that head?

A. Yes sir.

Mr. TREADWELL: We offer in evidence page 89 of this book, being the record of the gauge for September, 1898, and so much of page 90 as includes October 5, 1898. The reporter can copy it, so that the book can be taken away. It is in daily use, and is impossible to leave it here.

Mr. FULKERTH: That shows the depth of the water running over the headgate.

Mr. TREADWELL: It shows the relative depth. It does not show the true depth.

Mr. STONESIFER: We object to that upon the ground that it does not show the quantity of water that is running through the canal.

Mr. TREADWELL: It is not intended to. It has nothing to do with it.

Mr. STONESIFER: It is unintelligible unless it does.

Mr. TREADWELL: Perhaps the shortest way will be for me to read it now, because this book must go back tonight.

(Reads:)

			Feet.	Inches.
"September, 1898.				
"	1		1	7
"	2		1	8
"	3		1	8
"	4		1	8
"	5		1	8
" 917	6		1	7½
"	7		1	7
"	8		1	6
"	9		1	5
"	10		1	4
"	11		1	4
"	12		1	3½
"	13		1	2½
"	14		1	2
"	15		1	1
"	16		1	...
"	17		1	...
"	18		1	...
"	19		1	...
"	20		1	...
"	21		1	...
"	22		1	...
"	23		1	...
"	24		...	11
"	25		...	10½
"	26		...	10½
"	27		...	11½
"	28		1	1½
"	29		3	8
"	30		4	6
" October, 1898.				
"	1		4	10
"	2		4	9
" 918	3		4	8
"	4		4	5½
"	5		4	2"

Q. 18. Those readings there show the depth of the water as it passes through the headgate?

A. Yes sir.

Q. 19. What is the reading of the gauge when the canal is full, that is, as full as it can carry, not overflowing anywhere?

A. 7 feet 4 inches.

Mr. STONESIFER: No questions.

Testimony closed.

919 I certify that the foregoing depositions were taken pursuant to notice at the place stated in the caption to said depositions, at the several times set forth in said depositions, in my presence,

and in the presence of counsel for the respective parties to the cause in said caption entitled; that previous to giving his testimony, each of the witnesses in said depositions named was by me duly sworn to tell the truth, the whole truth, and nothing but the truth in said cause; that said depositions were taken down in shorthand and transcribed by Brainard C. Brown and Clement Bennett, competent stenographers and disinterested persons, pursuant to the stipulation and agreement of counsel in said cause; that the reading and signing of said depositions were, by agreement of said counsel, waived as in said depositions set forth; and that I have retained said depositions for the purpose of delivering the same, with my own hand, to the court for which they were taken.

Accompanying said depositions (which are bound in two volumes) and forming part thereof, are the several exhibits introduced in connection therewith, and referred to and specified therein.

I further certify that I am not attorney nor of counsel for any of the parties to said cause, nor in any way interested in the event thereof.

In witness whereof, I have hereunto set my hand this — day of October, A. D. 1899.

(Signed) E. H. HEACOCK,
Examiner in Chancery, U. S. Circuit Court for the Northern District of California.

10-cent internal-revenue stamp, canceled "E. H. H.—Oct. 21, 1899."

920 (Endorsed:) Testimony taken before E. H. Heacock, examiner in chancery etc. Received and filed Oct. 21, 1899, Southard Hoffman, clerk, by W. B. Beaizley, deputy clerk. Published and filed December 1st 1899, Southard Hoffman, clerk.

921 *Copies of Exhibits Ordered Transcribed into the Record.*

COMPLAINANT'S EXHIBIT No. 4.

This agreement made and entered into this eighteenth day of May, A. D. 1871, between the San Joaquin and King's River Canal Company, a corporation duly organized and doing business under and by virtue of the laws of the State of California, the party of the first part, and Henry Miller and Charles Lux, partners under the firm name and style of Miller & Lux, of the city and county of San Francisco and State of California, the parties of the second part:

Whereas: The party of the first part is organized for the purpose of constructing a canal on the west side of the San Joaquin river from King's river to tidewater at some point at or near Suisun bay.

Now therefore this agreement witnesseth: That the said party of the first part, in consideration of the covenants hereinafter contained upon the part of the parties of the second part, does hereby promise, covenant and agree to and with the said parties of the second part that it will construct said canal and complete at least sixty (60) miles thereof

from Fresno slough in Fresno county by the first day of January, 1872, and a further distance to some point on the Western Pacific railroad by the first day of April, 1872; provided the progress of the work be not obstructed or interfered with by any owner or
922 owners of land along the route of said canal; and in case of such obstruction or interference this agreement shall not be void if the said company use due diligence in acquiring a right of way by legal proceedings, and in prosecuting the work of constructing said canal; and further, that said party of the first part will, within a reasonable time, conducting the work with due diligence, lead into said canal the waters of King's river, thereby through said canal connecting the waters of the last-mentioned river with those of the San Joaquin river, and that said canal from Cole or Murphy's slough in the county of Fresno and State aforesaid, shall be forty (40) feet wide.

And the said parties of the second part, in consideration of the covenants herein contained on the part of the party of the first part, do hereby promise, covenant and agree to and with the party of the first part to give and grant into it a right of way by the most practicable route over their lands in Fresno and Merced counties, west of the San Joaquin river, for the purpose of making and maintaining said canal and its branches, and also for a towpath on each side of said canal.

And the said parties of the second part, in the considerations aforesaid, do further promise, covenant and agree to and with the said party of the first part, that if the said party of the first part shall complete as aforesaid at least sixty (60) miles of said canal from the said Fresno slough by the first day of January, 1872, that they will, after the expiration of time sufficient to raise two crops of grain on their said land, after the introduction of water by means of said canal for the purpose of irrigation, pay and give to said party of the first part, by way of subsidy, the sum of twenty thousand ($20,000.00) dollars in United States gold coin: Provided however, that sufficient water is furnished them, under the rules and
923 regulations of said company to irrigate not less than fifty thousand (50,000) acres of their land; and it is expressly understood and agreed that should the said party of the first part be unable to furnish to said parties of the second part sufficient water from said canal to irrigate fifty thousand acres of their land at such times and seasons as irrigation may be demanded by the said parties of the second part, then said subsidy shall be proportionately reduced—that is to say, the amount to be paid by way of subsidy shall bear the same proportion to twenty thousand dollars as any less number of acres than fifty thousand, belonging to said parties of the second part, which said canal is capable of irrigating, bears to fifty thousand acres; and further, the said parties of the second part promise and agree to and with the said party of the first part that when the said canal shall be completed from King's river to tidewater as aforesaid, so as to contain at all seasons of the year a sufficiency of water to irrigate at least fifty thousand acres of land of the said parties of the second part, and for nine (9) months in the

year to run boats of sufficient size and capacity to carry seventy-five (75) tons of freight at a single load, they will give and pay unto the said party of the first part, by way of subsidy the further sum of ten thousand ($10,000.00) dollars in United States gold coin.

And the said parties of the second part further promise covenant and agree to and with the said party of the first part, that, when the said canal is so far completed as to furnish water for purposes of irrigation, they will pay to said party of the first part for each crop a sum not exceeding one dollar and twenty-five cents ($1.25) per acre, or the prices paid by other parties, for every acre of
924 their said lands actually irrigated by them from the waters of said canal.

And for the purpose of enabling the party of the first part to carry out its enterprise and effectuate its designs as aforesaid, it is further agreed that it shall have the use and benefit of all sloughs between said canal and the San Joaquin river on the said lands of the parties of the second part.

And it is further agreed that should the said canal diminish the natural overflow which usually occurs between the first day of April and the fifteenth day of June, of the San Joaquin river and its sloughs, upon the said lands of the said parties of the second part, then the said party of the first part shall at any time between said months, open the gates of the said canal at the request of said parties of the second part, and, free of charge and expense to them, permit an overflow from the said canal on said lands equal in quantity of water to that of which they were deprived as aforesaid.

And it is further agreed that should the line of the said canal not be extended through the northern portion of the said lands owned by the said parties of the second part, that is to say, township 8 south, range 9 east, and township 8 south, range 10 east, Mount Diablo meridian, then they shall have the privilege of conducting from said canal, by means of a branch canal, a sufficiency of water for the purpose of irrigating at least five thousand (5000) acres of said northern portion, which said five thousand acres are to be computed as a part of the fifty thousand acres above mentioned.

And the said party of the first part further promises and agrees that it will promptly construct or cause to be constructed sub-
925 stantial bridges, not less than twelve feet wide over the said canal on the lands of the said parties of the second part, and that it will construct one such bridge at every six miles over such lands, at such points as the parties of the second part may designate.

It is hereby further agreed that the parties of the second part shall not be responsible to the party of the first part at any time for any damages which their cattle may do to the embankments of said canal; and it is further understood between the parties hereto that the said party of the first part shall have the privilege of cutting such brush from the lands of the said parties of the second part as may be necessary for use in constructing the embankments of said canal over their said lands, but such brush shall only be cut from such places as shall be designated by the parties of the second part.

The party of the first part further promises, covenants and agrees

to and with the parties of the second part to furnish and give them a sufficiency of water from said canal for their cattle, and for all domestic purposes for themselves, their tenants and employees, free of charge.

And the party of the first part hereby further promises, covenants and agrees to and with the parties of the second part, that should any damage result to the lands of the parties of the second part by mismanagement or want of due diligence and care in the construction, management and maintenance of said canal, it will pay to them, in gold coin, the full amount of said damage, whether occasioned by sand, water, or other causes, and to indemnify them fully for all loss thereby sustained.

It is hereby further covenanted and agreed that the right of way herein given shall not be transferred, or this contract or any
926 part thereof assigned by the party of the first part to any person or persons, company or companies, corporation or corporations whatever, without the written consent of the parties of the second part.

Should the party of the first part fail to perform the covenants and agreements herein contained to be kept and performed on its part, then and in that event, this agreement shall be null and void.

In witness whereof the said San Joaquin and King's River Canal Company, party of the first part, has caused these presents to be subscribed in its name by the president of said company, and to be attested by the secretary of said company, and the seal of said corporation to be hereunto affixed as the act and deed of said company, and the said Henry Miller and Charles Lux, parties of the second part, have also hereunto set their hands and seals the day and year first above written.

(Executed in duplicate.)

SAN JOAQUIN AND KINGS RIVER CANAL COMPANY,

[SEAL.] By JOHN BENSLEY, *President.*

HENRY MILLER. [SEAL.]

CHAS. LUX. [SEAL.]

Signed, sealed and delivered in the presence of—

Attest: L. B. BENCHLEY,

Secretary pro Tem. of the San Joaquin and Kings River Canal "Company."

(Endorsed:) Agreement. The S. J. & K. R. Canal Co. with Miller & Lux, May 18, 1871.

(Revenue stamps to the amount of twenty cents.)

927 COMPLAINANT'S EXHIBIT No. 5.

This indenture of two parts made and entered into this seventh day of February A. D. 1872 by and between Henry Miller and Charles Lux, of the city and county of San Francisco State of California, parties of the first part, and the San Joaquin and King's

River Canal and Irrigation Company a corporation incorporated under the laws of the State of California, party of the second part witnesseth

1. First. A certain agreement in writing bearing date May 18th 1871 entered into by the San Joaquin and King's River Canal Company, as party of the first part and said Henry Miller and Charles Lux as parties of the second part, providing among other things for the construction of a canal by said party of the first part thereto, and for the payment of certain subsidies in aid thereof by said parties of the second part thereto (which said contract has been by the consent of said parties of the second part thereto, assigned by said party of the first part thereto to the party of the second part to this instrument) is hereby by mutual consent annulled and cancelled; and neither party has any rights thereunder.

2. Secondly. In full satisfaction of their obligation under said agreement to pay a subsidy in aid of the construction of a canal for the distance for which said canal is already constructed said parties of the first part hereto have given their two certain promissory notes bearing even date herewith, each for six thousand six hundred and sixty-six $\frac{67}{100}$ dollars payable in U. S. gold coin to the order of Jno. Bensley, president of the San Joaquin and
928 King's River Canal and Irrigation Company one on the first day of August A. D. 1872, and one on the first day of August A. D. 1873.

3. Thirdly. Said parties of the first part hereto hereby covenant and agree to and with said party of the second part hereto to pay to said party of the second part on the first day of August A. D. 1874 the further sum of six thousand six hundred and sixty-six $\frac{66}{100}$ dollars in U. S. gold coin provided and in case that (and not otherwise) said party of the second part shall before that date

1. Extend its canal (already constructed for about forty miles of its length from Fresno slough northerly) so that its whole length from said slough shall not be less than fifty-eight miles, and furnish to said parties of the first part from said canal already constructed, and to be constructed, water sufficient to irrigate fifty thousand acres of land now owned by said parties of the first part, lying between said canal already built, and so to be built on the west, and the San Joaquin river on the east: or

2. Construct other canal or canals from said San Joaquin river, or some one of its tributaries, or from Tulare lake.—which shall furnish the water necessary for irrigating said fifty thousand acres of land as conveniently for use for that purpose as could be done by the extension hereinbefore mentioned of said canal already constructed, said extension to be at the grade of six inches to the mile.

4. Fourthly. Said parties of the first part do hereby give and grant to said party of the second part the right of way through and over all and any of their lands in Fresno, Merced and Stanislaus
counties in said State of California on the west side of the San
929 Joaquin river for any and all canal and canals which are already or shall be hereafter constructed by said party of the second part for irrigation or navigation; and to construct, maintain,

keep in repair and operate the same—and for towpaths and other necessary appurtenances to such canals; with the right to pass and repass over and upon the adjacent land of said parties of the first part for said purposes doing always as little damage as possible; said party of the second part to further have the privilege of cutting and taking from the land of said parties of the first part, at such places as they may designate, such brush as may be needed for the construction or repiar of said canal or canals over said land—and also to have the use and benefit of all sloughs on the land of said parties of the first part between the proposed canal and San Joaquin river, for the purpose of conducting water to said canal or to make a part thereof.

5. Fifthly. Said parties of the first part do hereby agree to pay to said party of the second part for water furnished by it, used in irrigating each crop, the regular price paid by others for irrigation not to exceed one dollar and twenty-five cents per acre for each acre so irrigated of land owned by said parties of the first part.

6. Sixthly. It is further agreed by and between the parties hereto that in case the canal of said party of the second part shall diminish the natural overflow of the San Joaquin river and its sloughs which usually occurs between the first day of April and the fifteenth day of June in each year upon the lands of said parties of the first part then and in such case said party of the second part shall at any time between said dates, at the request of said parties of the
930 first part, and free of charge and expense to them permit an overflow from the said canal upon said lands equal to that of which they shall have been so deprived as aforesaid.

Seventhly. And it is further agreed by and between the parties hereto that should the line of said canal already built, or of some other canal to be built by said party of the second part not be extended through the northern portion of said lands owned by said parties of the first part; that is to say, township 8 south, range 9 east, and township 8 south, range 10 east, Mt. Diablo meridian, then they, the said parties of the first part, shall have the privilege of conducting from said canal, by means of a branch canal, a sufficiency of water for the purpose of irrigating at least five thousand acres of said northern portion of said land, the same to be reckoned as a part of the 50,000 acres hereinbefore mentioned.

Eighthly. Said party of the second part further covenants and agrees to promptly construct or cause to be constructed, substantial bridges not less than twelve feet wide over its canal on the lands of said parties of the first part, one for every six miles, at such points as said parties of the first part may direct.

9. Ninthly. It is further agreed that said parties of the first part shall not be responsible to said party of the second part for any damage which their cattle may do to the embankments of the canal of said party of the second part.

10. Tenthly. Said party of the second part further agrees to furnish said parties of the first part a sufficiency of water from
931 its canals for their cattle and for all domestic purposes of themselves, their tenants, and employees, free of charge; and fur-

ther agrees to pay to said parties of the first part in United States gold coin the full amount of any damage resulting to their land from mismanagement or the want of due diligence and care in the construction, management and maintenance of said canal, whether occasioned by sand water or other causes, and to indemnify them fully for all loss thereby sustained.

11. Eleventhly. It is further understood and agreed that the right of way herein given shall not be transferred, nor this contract, nor any part thereof, assigned by said party of the second part to any person or persons, company or companies, corporation or corporations whatever without the written consent of the parties of the first part.

12. Twelfthly. Said party of the second part agrees to furnish water for the irrigation of the 50,000 acres of land belonging to said parties of the first part hereinbefore mentioned, as follows, to wit:— whenever required by said parties of the first part for irrigation at any time in the year 1872 after the first day of April, water enough to irrigate 16,667 acres: whenever required for irrigation after the first day of April in the year 1873 by said parties of the first part enough water to irrigate 16,667 acres additional or 33,534 in all; and by the first day of August A. D. 1874 enough water to irrigate 16,666 additional making 50,000 in all. And in case water shall not be furnished as aforesaid the subsidy to be paid hereunder shall be proportionately reduced so that the amount of subsidy paid in each year by said parties of the first part shall bear the same proportion to that hereinbefore provided to be paid in such year, as the area of
932 land for which water shall be furnished in each year as provided hereunder shall bear to the area for which water is hereinbefore provided to be furnished in such year.

Water to be furnished under and according to the rules of the corporation party of the second part hereto, and the reduction of subsidy above provided for to be in lieu of all claims for damages for not furnishing water as agreed.

In testimony whereof said parties of the first part have set their hands and seals, and said party of the second part has caused its corporate seal and the hands of its president and secretary to be affixed to this and another instrument of like tenor and date the day and year first above written.

In presence of—

HENRY MILLER. [SEAL.]
CHAS. LUX. [SEAL.]
JOHN BENSLEY,
Pres. S. J. & K. R. C. & I. Co.
[SEAL.] SAMUEL I. C. SWEEZY,
Sec. S. J. & K. R. C. & I. Co.

(Endorsement:) Contract between Henry Miller and Charles Lux and the San Joaquin and King's River Canal and Irrigation Co., dated Feb. 7th 1872.

933 COMPLAINANT'S EXHIBIT No. 6.

This instrument made, this twelfth day of November A. D. 1879, by and between the San Joaquin and Kings River Canal and Irrigation Company, a corporation organized and existing under the laws of the State of California, the party of the first part and Henry Miller and Charles Lux, the parties of the second part, witnesseth:

Whereas differences have existed between the respective parties hereto in relation to the construction of a contract made by and between said parties bearing date the seventh day of February, 1872, and a suit is now pending wherein said construction is involved:

And whereas, a committee was appointed by the board of trustees of said corporation on the 28th day of August, 1879, "to take steps to settle without further litigation all matters in dispute in suits now pending between this company and Miller & Lux:"

And said committee afterwards reported to said board of trustees in writing in which a settlement of said matters was recommended upon the terms therein set forth, and said recommendation was concurred in by the owners of more than three-fourths of the capital stock of said corporation, to which said report and recommendation now on file among the records of said corporation reference is here made for greater certainty:

And whereas, said parties of the second part have consented to settle and compromise all said matters of difference upon the terms recommended by said committee and stockholders and the said party of the first part by its board of trustees on the 30th day of
934 October, 1879, duly passed a resolution approving of said settlement and compromise, and authorized the president and secretary of said corporation to carry said resolution into effect,

Now in consideration of the premises, it is covenanted and agreed as follows:

First. Said parties of the second part in consideration of the premises and of the covenants herein made by the party of the first part shall forthwith upon the execution of this instrument make, execute and deliver to the said San Joaquin and Kings River Canal and Irrigation Company, a deed which shall convey the right of way for said canal where the same passes through or over their lands, of a width of one hundred (100) feet on each side of the center line of said canal.

Second. Said party of the first part in consideration of the premises and of the execution and delivery of said deed hereby covenants and agrees, that subdivision fifth of the contract referred to as Exhibit "A" in the complaint filed in that certain action now pending in the district court of the nineteenth judicial district of the State of California in and for the city and county of San Francisco, entitled "The San Joaquin and Kings River Canal and Irrigation Company *vs.* Henry Miller and Charles Lux," being the same contract hereinbefore referred to and bearing date the seventh day of February, A. D. 1872, shall be construed to mean that this company, the party of the first part herein, will deliver water thereunder at its regular

rates not exceeding one dollar and twenty-five cents per acre per crop, provided the crops are cut, but in case the alfalfa lands should be pastured, then each supply of water of the usual quantity supplied to produce a crop shall be deemed to be such a supply as will entitle a charge to be made therefor
935 the same as if a crop shall be cut, and said subdivision shall likewise apply with the proviso aforesaid, to said Miller and Lux, their tenants, employees, heirs, executors and administrators, and shall run with the land so long as this company exists to the extent of thirty-three thousand three hundred and thirty-three and one-third (33,333⅓) acres, but shall not apply to the grantees of said Miller and Lux, nor to the grantees of their heirs, executors, or administrators; and subdivision tenth of said contract shall apply to all domestic animals owned, pastured or cared for by Miller and Lux, their tenants, employees, heirs, executors or administrators.

In witness whereof, the said The San Joaquin and Kings River Canal and Irrigation Company has hereunto set and affixed its corporate name and seal the day first above written by Joseph Sedgley, its president and F. L. Palmer, its secretary thereunto duly authorized and the parties of the second part have hereunto set their hands and seals the day and year first above written.

THE SAN JOAQUIN AND KINGS RIVER CANAL AND IRRIGATION COMPANY,

[SEAL.] By JOSEPH SEDGLEY, *President*,
F. L. PALMER, *Secretary*.
CHAS. LUX. [SEAL.]
HENRY MILLER. [SEAL.]

STATE OF CALIFORNIA, } ss:
City and County of San Francisco, }

On this twelfth day of November, A. D. one thousand eight hundred and seventy-nine before me, Sam'l S. Murfey, a notary
936 public, in and for the said city and county, residing therein, duly commissioned and sworn, personally appeared Chas. Lux and Henry Miller known to me to be the persons described in and who executed and whose names are subscribed to the within and annexed instrument, and they each acknowledged to me that they executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

SAM'L S. MURFEY,
[SEAL.] *Notary Public.*

STATE OF CALIFORNIA, } ss:
City and County of San Francisco, }

On this twelfth day of November, A. D. one thousand eight hundred and seventy-nine, before me, Sam'l S. Murfey, a notary public, in and for the said city and county, residing therein, duly commis-

sioned and sworn, personally appeared Jos. Sedgley known to me to be the president and F. L. Palmer known to me to be the secretary of the San Joaquin and Kings River Canal and Irrigation Company the corporation that executed the foregoing instrument, and acknowledged to me that such corporation executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

SAM'L S. MURFEY,
[SEAL.] *Notary Public.*

(Endorsement:) Agreement. San Joaquin and Kings River Canal and Irrigation Company with Henry Miller and Charles
937–978 Lux. Dated November 12th, 1879. Recorded at request of Wells, Fargo & Co., at 15 minutes past 8 o'clock a. m. this 14th November, 1879, in Book C of Covenants, Records of Fresno Co., Cal., pp. 262 *et seq.*

A. M. CLARK, *Recorder.*

Recorded at request of Wells, Fargo & Co., at 35 min. past 8 o'clock a. m., Nov'b'r 21st, 1879, in Book B of Agreements, page 66 *et seq.*, records Merced Co.

E. J. HAMILTON, *Recorder,*
By M. H. WALSH, *Dep'ty.*

* * * * * * *

979 "COMPLAINANT'S EXHIBIT 9."

418 CALIFORNIA STREET,
SAN FRANCISCO, *9th December*, 1873.

His Excellency, Governor Newton Booth.

SIR: The San Joaquin and King's River Canal and Irrigation Company have undertaken an enterprise of great magnitude, and believed by the undersigned projectors, to be of great public utility.

It is proposed by the company to irrigate 500,000 acres of land, and thus render the same fit for cultivation, and attract thereto a large increase of the agricultural classes.

The land along the west side of the San Joaquin valley, as is well known, is of little or no value with- irrigation, but when properly irrigated it is exceedingly fertile and very valuable.

The company have expended in securing water rights, right of way, surveys, and the construction of canal over $600,000, and are now actively engaged in the prosecution of the work, incurring monthly large additional expenditures.

The system we have adopted has been devised by engineers of great experience, and of acknowledged ability, and the work has been performed in accordance with the plans of these engineers, after the most careful and exhaustive surveys.

The project of a canal from King's river and Tulare lake
980 for the purpose of transportation, and irrigation of the west side of the valley, was undertaken in eighteen hundred and

fifty-two (1852) and from that time to the present there have been yearly expenditures upon the same.

But the enterprise as a whole, was inaugurated in 1871 by the present corporation, who are the successors in interest of the original projectors.

At that time (1871) the necessity of the work was forced upon the attention of the undersigned by the great drought of that year.

When the undersigned engaged in the undertaking, there was no public opposition whatever; on the contrary, the farmers and others in the valley earnestly desired its immediate execution.

The legislature and the courts of California recognized and sanctioned such use of the inland waters for agricultural purposes, and made rules specially governing the rights of parties appropriating the same for irrigation; and the delegation in Congress, from this coast, in 1866, procured an act giving the right of way over the public lands, for canals and ditches. Moreover, this State received from the General Government the rights to the use of the inland waters, both of rivers and lakes, and therefore, the legislature and courts of this State had the power to give authority to condemn and appropriate for irrigation purposes, the said waters.

For over twenty years the rivers and streams of California have, under the several acts of the legislature, been diverted for mining, agricultural and other purposes.

981 It is true that the proprietors undertook this important enterprise as a private speculation; but they understood at the same time that it would be a great public good in increasing so largely the taxable property of the State. We may add that eight-tenths of the capital has been subscribed by parties who do not own a single acre of land on the west side of the San Joaquin valley. The incidental benefits that they might obtain, in common with the people at large, under the provision- of the acts, of 1853, 1862, 1870 and 1866, was the great inducement for the undertaking, at the same time they hoped to realize a reasonable profit on their investment.

During the past year, and after the expenditure of a large amount of money on the undertaking, there has been much discussion by the press and the people, indicating a public sentiment in opposition to the ownership of such property by individuals and corporations.

Your Excellency has also expressed in official documents and otherwise the opinion that such enterprise ought not to be under the control of private corporations, but that all the inland waters of the State ought to be controlled by the State alone, for the purpose of irrigation.

We, the undersigned trustees of this company, do not wish to occupy an attitude in opposition to the public welfare, we therefore propose that a law be passed for the condemnation of the canal surveys, water rights, lands and all the property, contracts, etc. of the company; and that the same be appraised by a commission appointed by Your Excellency, or the legislature and taken

982–1004 by the State, at the price that such commission shall deem just and equitable.

If there is any question or doubt about the power of the State to condemn our vested rights and property, we will waive any legal rights we may have in the premises, and deed the same to the State, for such sum as your commission may designate.

We respectfully request that Your Excellency will, at an early day in a special message to the legislature, submit to them, this our proposition.

We remain very respectfully,

Your Excellency's obedient servants,

(Signed) J. MORA MOSS,
I. FRIEDLANDER,
W. S. CHAPMAN,
CHAS. WEBB HOWARD,
JOHN BENSLEY,
A. H. ROSE,
CHAS. LUX,
Trustees of the S. J. & K. R. C. & I. Co.

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1005 "COMPLAINANT'S EXHIBIT 18."

To the board of directors of the San Joaquin and Kings River Irrigation Company.

GENTLEMEN: The undersigned, farmers and land-owners on the west side of the San Joaquin river, ask your company to present them a copy of the conditions on which you would extent the existing canal through our lands to its end, and build the proposed canal from Tulare lake to Antioch, at as early a day as possible:

A. P. STOCKING.
JULES KAHN.
ROB'T SHEPLEY, JR.
M. GAMMER.
J. FIELD.
FRED BANDHOLEN.
L. GISH.
J. C. ALLEN.
T. MOHR.
F. VON LOSTEN.
PETER HANSEN.
GEORGE SEMOS.
J. A. PECK.
C. S. HILL.
JOHN CHRISMAN.
C. BATTERMAN.
WM. F. BOULWANE.
JAMES LINEHAN.
W. T. SMITH.
FRENZ HUCK.
GEO. THOMING.
M. T. BITHEY.
P. G. GOODMAN.
D. S. TODD.
J. S. LANGDON.
J. H. CORCORAN.
H. M. PECK.
G. S. FOSTER.
JOHN C. DROGE.
E. STEVENS.
J. RATHJEN.
WILLIAM GOLDEN.
D. J. SADDLEMIN.
L. GODCHAUX.
ANDREW SINKS.
W. C. GERLACH.
H. M. HAMILTON.
WM. ROBERTS.
G. W. COWAN.
WM. UTEMDORFFER.
E. C. COLLINS.
D. HUCK.

JOHN DREYER.
F. NICHOLSEN.
WM. RIECKE.
THOMAS OHM.
HENRY DROGE.
J. D. LOCKART.
LEVI KINKER.
MAURICE BYRNES.
H. HOLTORFF.
O. FOKEE.
JAMES CARTER.
A. KOLBERG.
1006 JOHN J. RHEA.
E. L. JONES.
W. M. JONES.
J. R. PETERMAN.
W. M. BELDING.
WILLIAM H. SMITH.
FRED MELVILLE.
A. CLASSEN.
CHRIST. SCHROEDER.
JOHN BRENNAN.

Approximate Quantity of Land.

A. P. Stocking	960
Jules Kahn	320
Rob't Shepley	160
M. Lammers & Brother	1280
J. Field	160
Fred Bandholdt	1120
L. Gish	160
J. C. Allen	640
J. Mohr	320
F. Von Sosten	160
Peter Hansen	160
Geor*d*e Servos	160
J. A. Peck	160
C. T. Hill, rents ½ section	320
Owned by Conby, San José,	
John Chrisman	320
C. Batterman	160
Wm. F. Boulwere	160
James Linehan	160
W. T. Smith	160
Frank Huck	160
Geo. Thomirey	160
John Dreyer	160
F. Nicholsen	160
Wm. Riecke	640
	6320

Thomas Ohm	160
J. D. Lockart	160
Levi Rinker	160
Mauria Byrnes	160
H. Holtorff	160
O. Foster	160
James Carter rents (640) owned by Weaver Woster & Co.	640
A. Kohberg, owned by H. L. Kohn of Suisun	1500
Sold ½ for seven or eight thousand dolls.	
John J. Rhea near Hill's Ferry	960
J. R. Peterman	160
Wm. H. Smith	160
1007 M. T. Bether, rents of Stephen Whipple & Chambers of San Mateo	2100
P. G. Goodman	160
D. S. Todd	160
J. S. Langdon	160
J. H. Corcoran	160
H. M. Peck	160
G. T. Foster, rents of O. Foster	160
John C. Droge	1120
E. Stevens, rents of Conley of San José	640
Wm. Golden	160
D. J. Saddlemire	800
	10160
L. Godchaux	480
Andrew Sinks	160
W. C. Garlach	160
Wm. Roberts	160
G. W. Cowan	160
Wm. Uttendorffer	160
E. C. Collins	160
D. Hook	160
A. Classen	160
Christ Schroder	160
John Brennan	160
	2080
	6320
	10160
	18560 acres

The above lands are all located bt. San Joaquin city & Ellis, and the signatures were collected in not to exceed four days' time, and 15 of the number are graingers, and only 3 or 4 who had been applied to of this number refused to sign, and all the farmers & landowners up to Hill's Ferry will sign. So says Mr. Charles Kahn,

brother of Julius K— Mr. Julius Kahn who has a store at Banters, says if propositions left at his store, will be signed, & he will personally go around, and many others (farmers) will go around and get signatures, and we, Julius Kahn, J. C. Droge & Charles Kahn, who come here in behalf of those persons who have signed, request that the trustees of the canal Co. do make a proposition to extend the canal to tidewater.

San Fr'co, June 6th, 1874.

1008 (Endorsed :) 187. Petition of 65 farmers for the extension of the canal. Received by the board at meeting of June 13", '74, & ordered placed on file.

"COMPLAINANT'S EXHIBIT 19."

LOS BANOS, *August 4th*, 1875.

J. L. Palmer, Esq., sect. Kings River & San Joaquin — & Irrigation Comp.:

Encourage*aded* by many land-owners between camp No. 13, Los Banos & the San Louis creek desirous to obtain water from your canal through a ditch to com-ence in the vicinity of camp No. 12 (subject to survey), the waste water to empty in San Louis*e* creek, a distance of about 20 miles, on the west side of your canal, I submit to you the following propositions, for the earl*y*est possible building & completion of a ditch for irrigation & other purposes:

1. The land-owners propose to pay $1.50 per acre of the land irrigated by said ditch per an-um.

2. The land-owners bind themselves to pay one-half the expenses of said ditch, the money cash paid or by teams & labor furnished at their option.

3. The K. & S. J. C. & Irrigation Comp. binds itself & its successors never to raise the price of water as above stated, & if the present comp. should sell their whole or part of a- interest therein, that
1009 the buyers of the same acknowl*ea*dge their obligations to sell them water under the same conditions.

4. After the completion of the ditch the Kings River & S. J. C. & Irrigation Comp. binds itself to keep the ditch in proper repairs.

The actual survey made by your comp. will determine the cost of the ditch, the numbers of acres that can possibly be irrigated & according to this survey & estimate the land-owners will bind themselves.

I beg of your comp. the earl*y*est kindly considerations of the above propositions towards this enterprice, and remain*e*,

Respectfully yours, ADOLPH WIDMAN.

"COMPLAINANT'S EXHIBIT 20."

BANTAS, *May 13th*, 1874.

Mr. J. Friedlander.

SIR: A number of our farmers have requested me to write to you & ask of you the following information: Does the Kings River & S.

J. Irrigation Company intend to build at an early day the great canal from Tulare lake to Antioch? Should the farmers agree to the propositions made by your company two years ago, would this induce the company to begin work immediately or at an early day?

What were those propositions?

1010 They are prompted to ask these informations of you by the firm belief that in your interests in common with the irrigation company you are prompted mostly by the interest you feel towards the prosperity of the grain producer.

This season has shown that we cannot depend on regular crops in this valley without a system of irrigation, and they are satisfied that they cannot depend on the schemes started by a set of office-seekers for the building of the canal by the passage of State laws, which would become a heavier burden on the incomes of the farmer than the conditions imposed by the company.

I believe, and most of our farmers do, that the real conditions of the company have been misrepresented; they are surely misunderstood by the farmers of this valley, as few agree on any conditions. I firmly believe that any reasonable demands of the company would be readily acceded to by the $\frac{99}{100}$ of the farmers at least. They have arrived to such a degree of poverty and hopelessness that their last hope now is the canal, the success of which has been proven up this valley. The opposition formerly manifested to the company has never been general; it was the opposition of a few office-seekers. The farmers, confident in your integrity & in your common interests with them, now ask you to take some interest in their condition, & if any effort of them will help the completion at an early day of the great canal, the only one which will benefit us much, they are ready to give the company their help and to agree to any reasonable subsidy or agreement. If you will again open negotiations

1011 between the company & the farmers, that will conduce to an early completion of the canal, they will be thankful to you, and I place myself at your disposal for anything I may do towards that end.

I am, sir,

Yours truly, JULES KAHN.

(Endorsed:) Letter from Jules Kahn to J. Friedlander, urging extension of the canal. Dated May 13th, 1874.

"COMPLAINANT'S EXHIBIT 21."

DURHAM'S FERRY, CAL., *May* 4, 1874.

J. Morra Moss, San Francisco:

What inducements from owners of land could be offered your company that would insure the enlarging and extending your canal to this place (twenty miles from Orestimba creek) the present season? From your present source of supply, could you get water to irrigate all the land below the canal?

Yours respectfully, SAM'L HINCKLEY.

Please answer and direct to Stockton.

(Endorsed:) Letter from Sam'l Hinckley, asking what inducements could be offered to secure the extension of the canal to Durham's Ferry. Dated May 4, '74.

1012 "COMPLAINANT'S EXHIBIT 22."

This agreement, made this 24th day of December, 1897, by and between the San Joaquin and Kings River Canal and Irrigation Company, a corporation organized and existing under the laws of the State of California, the party of the first part, and Miller & Lux, a corporation organized and existing under the laws of said State, the party of the second part, witnesseth:

Whereas, on the 3rd day of June, 1897, Henry Miller individually and as surviving partner of the late firm of Miller & Lux, and the executor, heirs, devisees and legatees of Charles Lux, deceased, conveyed to the said party of the second part all of the property, assets and effects of said late firm of Miller & Lux; and,

Whereas, said Henry Miller and the executor, heirs, devisees and legatees of said Charles Lux, are the only persons interested in said Miller & Lux, said corporation, and for that reason said corporation (Miller & Lux) is considered by the parties hereto to be entitled to the rights, benefits and privileges hereinafter granted;

Now, therefore, it is agreed by and between the parties hereto, that all the rights, benefits and privileges secured to Henry Miller and Charles Lux by a certain agreement made between them and the party of the first part on the 7th day of February, 1872, and by a certain further and supplementary agreement made between said parties on the 12th day of November, 1879, have vested and shall inure to the benefit of the party of the second part, its tenants and employees, in the manner and as fully and effectually as they
1013 vested in and inured to the benefit of said Henry Miller and Charles Lux, but subject, however, to all the conditions in said contracts expressed and contained.

And it is further agreed that the true intent and meaning of so much of the second paragraph of said last-mentioned contract as relates to the rates to be paid by said Miller & Lux for water furnished for irrigation, is, that the said Henry Miller and Charles Lux were to pay, and the said party of the second part is to pay for each crop irrigated, or for water furnished of the usual quantity supplied to produce a single crop, one-half of the regular rates per season of two crops, but not in any case to *succeed* one dollar and twenty-five cents ($1.25) per acre per crop.

In witness whereof, this agreement has been executed in duplicate by the vice-president and secretary of the party of the first part, and by the president and secretary of the party of the second part, under the corporate seals of said respective corporations, they having been

respectively authorized thereto by resolution of the boards of directors of said corporations respectively.

[SEAL.] THE SAN JOAQUIN & KINGS RIVER CANAL & IRRIGATION CO.,
By J. LEROY NICKEL, *Vice-President*,
And by C. Z. MERRITT, *Secretary*.

[SEAL.] MILLER & LUX,
By HENRY MILLER, *President*,
And by DAVID BROWN, *Secretary*.

Errata: The word "succeed" in line 8 above should read "exceed." See minutes of S. J. & K. R. C. & I. Co., vol. 2, page 39. C. Z. M.

1014–1033 (Endorsed:) Agreement. The San Joaquin & Kings River Canal & Irrigation Co. with Miller & Lux. Dated December 24, 1897.

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1034 "COMPLAINANT'S EXHIBIT 25."

To the trustees of the San Joaquin and King's River Canal and Irrigation Company.

GENTLEMEN: We, a committee of your body, appointed under resolution of our board adopted Aug. 28th, 1879 "to take steps to settle without further litigation all matters in dispute in suits now pending between this company and Miller & Lux," do hereby report as follows, viz:

We have carefully examined the matters in controversy between our company and Miller & Lux in the case now pending in the nineteenth district court of this State entitled "The San Joaquin and King's River Canal and Irrigation Company against Miller & Lux" as set forth in the complaint of said company; in the cross-complaint and answer of Miller & Lux; and in the answer of the company to the said cross-complaint.

In making this examination we have been actuated by a desire to arrive at the exact truth of the matter; to discover the true cause of the controversy, and, if possible, to settle the same equitably. In doing so we have gathered all the facts obtainable from sources on both sides of the question.

In the complaint and cross-complaint many of the allegations are trivial and on their face improbable, and bear evidence of being rather the product of a bitter personal quarrel than of an honest effort to litigate a disputed point.

1035 The material difference between these litigants, as we learn from the pleadings in the case, and from the testimony of persons well informed in the facts relative thereto, is as to the construction of articles 5 and 10 of a certain agreement made between Miller & Lux and our company, a true copy of which is attached to the complaint in said case and marked "Exhibit A."

As to article 10, our company holds that sheep are not "cattle" within the scope of said agreement; this we think is an untenable position.

As to article 5, Miller & Lux claim that said agreement shall run with the land to them, their tenants and grantees forever, to the extent of 50,000 acres, whilst our company rather inconsistently repudiates the article, claiming that it only ran for three years from the date of contract. The article is ambiguous and difficult of construction, but we think neither view is correct, and we recommend the following compromise which we believe to be in accordance with the spirit of the contract, and equitable and just to both parties.

As to the other matters alleged in the complaint and cross-complaint in said case, those which are provable and material are generally admitted in the respective answers, and on computing these items we find that they almost balance each other, leaving only a small sum in favor of Miller & Lux.

We would also call your attention to the fact that Miller & Lux have not conveyed to this company the right of way to much of their land through which the canal passes, and the conveyances they have made are indefinite as to width. It is important
1036 that conveyances thereof should be obtained and in arranging a compromise we have made it a primary condition that Miller & Lux shall convey to this company a right of way of 100 feet wide on each side of the center line of said canal so far as said canal passes through their lands.

We therefore recommend that this company settle all matters of difference between them and said Miller & Lux upon the following terms, viz:

1. Said Miller & Lux shall by deed convey to this company a right of way for said canal over their lands, where said canal has been constructed, of the width of one hundred feet on each side of the center of said canal.

2. That subdivision fifth of the contract referred to as "Exhibit A" in the complaint filed in said action shall be so construed as to apply to said Miller & Lux, their tenants, employees, heirs, executors, and administrators, and shall run with the land to the extent of thirty-three thousand, three hundred and thirty-three and one-third acres (33,333⅓ ac.), but shall not apply to the grantees of said Miller & Lux, or the grantees of their heirs, executors or administrators; and subdivision tenth of said contract shall apply to all domestic animals owned, pastured or cared for by Miller & Lux, their tenants, employees, heirs, executors or administrators.

3. That the conditions and stipulations above referred to shall be placed in such proper form as shall be binding upon this company and said Miller & Lux, and

4. That when the same is done, then said action and cross-action shall be dismissed, each party releasing the other from all
1037 claims and demands referred to in said action and cross-action.

San Francisco, Oct. 1879.

WILLIAM CENTER.
JOSEPH ROSENBERG.
JOHN H. BOLTON.

We recommend the above settlement:

J. C. Wilmerding	2100 shares
Jas. D. Walker	4941 "
Claus Spreckels	5000 "
J. C. Stuart, trustee	1841 shares
Timothy Paige	1000 "
D. P. Barstow, trustee	4941 "
E. A. Richardson, trustee	4941 "
J. B. Haggin	1000 "
Henry Pierce	1000 "
James E. Gordon	500 "
Wm. S. Chapman	100 "
C. T. Pearson	300 "
Jos. Sedgley	300 "
John H. Bolton	100 "
Jesse S. Potter	4250 "
Jos. Rosenberg	3900 "
Miller & Lux	41625 "
	77839

(Endorsed:) 219 "A." Report of trustees' committee in matter of settlement of matters in dispute with Miller & Lux and approval by stockholders. October, 1879.

("Complainant's Exhibit 26"—map of complainant's canal.)

1038 "RESPONDENTS' EXHIBIT E."

This agreement, made this 18th day of May, 1899, by and between the San Joaquin and Kings River Canal and Irrigation Company, a corporation organized and existing under the laws of the State of California, the party of the first part, and Miller & Lux, also a corporation organized and existing under the laws of said State, the party of the second part, witnesseth:

That, whereas, prior to the construction of the canal of the party of the first part, Henry Miller and Charles Lux were the owners of lands lying along and bordering upon the San Joaquin river, and its sloughs, in said State, and lying above and below the head of the canal of the party of the first part, and were the owners of riparian rights in and to the waters of said river and sloughs, and had been accustomed to and did actually use the waters of said river and sloughs which naturally overflowed said lands, and also to take water therefrom by artificial means, for the purpose of irrigating said lands and furnishing water for their cattle and live stock, and for other domestic uses, in accordance with their said riparian rights;

And, whereas, said Henry Miller and Charles Lux, for the purpose of aiding the construction of said canal of the party of the first part, did pay to the party of the first part a subsidy in money, and conveyed to it a right of way for its said canal where the same passed

through the lands of said Henry Miller and Charles Lux of
1039 a width of one hundred (100) feet on each side of the center line of said canal, and permitted the party of the first part to appropriate and divert from said river through said canal eight hundred (800) cubic feet per second of the water flowing in said river;

And, whereas, at all times since said appropriation was made by the party of the first part, said Henry Miller and Charles Lux, and said Henry Miller, as the survivor of them, and the party of the second part (as the successor in interest of said Henry Miller and Charles Lux) continued, as said riparian owners, to use the overflow waters of said river and sloughs upon said lands for the aforesaid purposes, and also to use, for the purpose of irrigating uncultivated land, and furnishing water for their live stock and for other domestic uses, and with the consent of the party of the first part, and without any charge therefor by it, the surplus water running in said canal not used or required by the water-consumers of the party of the first part other than said Henry Miller, Charles Lux, and the party of the second part;

And, whereas, during all said times it was understood by all said parties that said Henry Miller and Charles Lux, and said Henry Miller, as the survivor of them, and said party of the second part, as the successor in interest of them, were of right entitled to the said use, without charge, of the said surplus water in said canal; and that said party of the first part was of right entitled to waste said surplus water on said uncultivated lands;

And, whereas, the party of the second part has agreed to permit the party of the first part to appropriate and divert from said
1040 river, through its "outside canal," three hundred and fifty (350) cubic feet per second of the water flowing in said river, in addition to the aforesaid eight hundred (800) cubic feet per second;

Now, therefore, in consideration of the premises, and to the end that the rights of the respective parties hereto, as heretofore understood and recognized, may be fixed and established, the party of the first part does hereby confirm unto said party of the second part the right to use, for the purposes of irrigating the said uncultivated lands above referred to, and of furnishing water for its cattle and live stock, and for other domestic uses, free of cost or charge to it, all or so much of the surplus water running in the canals of the party of the first part as the party of the second part may desire to use for said purposes, and which may not be used or required by the other water-consumers of the party of the first part; and said party of the second part does hereby confirm unto said party of the first part the right to waste said surplus water on said uncultivated land.

And the party of the first part does hereby acknowledge and declare that it has no claim to make against the party of the second part, or its predecessors in interest, on account of the use heretofore made by it and them of said surplus water.

In witness whereof the said parties hereto have caused these

presents to be subscribed by their respective presidents and secretaries, under their respective corporate seals, all on the day and year first above written.

THE SAN JOAQUIN & KINGS RIVER CANAL & IRRIGATION CO.,
By HENRY MILLER, *President*, [SEAL.]
By C. Z. MERRITT, *Secretary*.
[SEAL.]
MILLER & LUX,
By HENRY MILLER, *President*,
By DAVID BROWN, *Secretary*.

1041–1057 (Endorsed :) Agreement of the San Joaquin & Kings River Canal & Irrigation Company with Miller & Lux. Dated May 18, 1899.

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1058 COMPLAINANT'S EXHIBIT No. 2.

Statement of Cost of Construction of Canal and Works of San Joaquin & Kings River Canal & Irrigation Company to November 25, 1895.

Paid San Joaquin & Kings River Canal Company cost of works to date of purchase.....	$119,335.29
" John Bensley *et al.* in stock (15,000 shares at $7.50) for remainder of property of old company.....	112,500.00
" by this company for construction performed by itself from date of purchase from old company to February 28, 1885.....	739,277.84
" by this company for construction from March 1, 1885, to November 25, 1895.....	84,685.51
Total.....	$1,055,798.64

(Endorsed :) U. S. circuit court, N. dist. of Cal. The San Joaquin and Kings River Canal and Irrigation Co. *v.* The County of Stanislaus, *et al.* No. 12257. Complainant's Exhibit No. 2. E. H. H. examiner. Published and filed December 1st 1899, Southard Hoffman, clerk.

1059 COMPLAINANT'S EXHIBIT No. 3.

Cost of Maintenance of the San Joaquin & Kings River Canal & Irrigation Co.

Fiscal years ending Nov. 25th,	1896.	1897.	1898.
Salaries	$4500.00	$4750.00	$4750.00
Office rent	480.00	440.00	320.00
Taxes	2771.33	2778.07	2878.57
Legal expenses	2869.63	1093.65	6576.95
Labor	4254.75	4273.56	6406.25
Subsistence	1647.11	1657.45	2567.20
Horses and feed	1342.22	1823.73	3255.91
Vehicles & harness	257.19	297.81	329.09
Tools and machinery	1.86	177.67	182.45
Lumber	1923.10	706.38	1092.92
Instruments & office furniture	52.92	Cr. 44.50	8.50
Household furniture	34.80	10.30	23.33
Telephone line & inst. exp.	8.91	47.49	68.62
Repair of headworks	2311.59	1054.98	84.30
Expenses of S. F. office	285.62	185.22	342.21
General expense	578.82	689.06	640.21
	$23319.85	$19940.87	$29526.51

(Endorsed:)—U. S. circuit court, N. dist. of Cal. The San Joaquin and Kings River Canal and Irrigation Co. *v.* The County of Stanislaus, *et al.* No. 12257. Complainant's Exhibit No. 3. E. H. H. examiner. Published and filed December 1st 1899, Southard Hoffman, clerk.

1060 COMPLAINANT'S EXHIBIT No. 11.

Statement of Irrigation by the San Joaquin & Kings River Canal & Irrigation Company for Three Years Ending November 25, 1898.

1061 Statement of irrigation by the San Joaquin & Kings River Canal & Irrigation Company for the year ending June 30th, 1896.

1896.

	2.50, Alf.	1.50, Gr.	2.00, Gr.	2.50, V. & O.	Sun.	
Oristimba section:						
Mrs. S. A. Armistead	10½					$26.25
W. Aldidzer & Draper	70					175.00
H. P. Anderson	3½					8.75
J. V. Bailey	77					192.50
A. Barbarri	8½					21.25
Richard Baker	34.42					86.23
H. A. Bawman	15					37.50
Brown Bros	33					82.50
W. D. Bill & I. P. Crow	118.21			4		305.53
John Bhend	2					5.00
B. J. Bither		6				9.00
John Croco					4 gard.	20.00

	2.50, Alf.	1.50, Gr.	2.00, Gr.	2.50, V. & O.	Sun.	
Mrs. E. Cary	226.93					567.32
Geo. H. Crow	117.82					294.55
J. T. Crow	270			3		682.50
Crow & McDermott	105.75					264.37
W. T. Carson	45					112.50
E. W. Crow	15					37.50
I. P. & Mrs. C. Crow	100					250.00
Est. of J. B. Crow	229.39					573.48
Crow & Stewart	100					250.00
J. B. Crow, Jr	195					487.50
B. H. Crow	45.50	22				146.75
B. F. & B. H. Crow	54.50	66.65				236.25
A. E. Clary	48					120.
T. A. Crow					15 C	30.00
W. F. Draper	12	100				180.00
James Drickell	6	25	41	2		139.50
S. P. Dalby	37	30				137.50
Eastin & McDermott	316.68					791.70
C. C. Eastin	97.50					243.75
Forward	2394.27	249.65	41	9	19	6514.68

1062

1896.

	2.50, Alf.	1.50, Gr.	2.00, Gr.	2.50, V. & O.	Sun.	
Forward	2394.27	249.65	41	9	19	$6514.68
J. H. Eddleman		1.33				2.00
Fink Bros.	54					135.00
W. F. Fink	58					145.00
J. D. Flory	4					10.00
Giovanni & Crow	220					550.00
John Green	22.31					55.77
T. A. Garabaldi	8½					21.25
John Gidding	5½					13.75
V. Ghidozo	6				2 gard.	25.
C. Huber & Russ	29.51					73.77
J. R. Hudelson	50					125.
Jas. P. Harris		4				6.
H. A. Hartman	29					72.50
Hanscom Bros.	25	16				86.50
A. W. Hauston	36					90.
Henry Hansen	4					10.
E. W. Heston	5.26					13.13
W. H. Isom				1		2.50
Henry Klehn	145.55	53				443.37
Chris. Krogh	22					55.
Mrs. A. Kricke	100	35				302.50
L. H. Kahm	4.76					11.90
Guy Kilburn	239.09					597.72
Levy & Dabzinsky	3					7.50

	2.50, Alf.	1.50, Gr.	2.00, Gr.	2.50, V. & O.	Sun.	
H. C. Lausen	4					10.
Wm. Lundy	20					50.
M. F. Lundy	21					52.50
Lare & McAulay	60					150.00
H. Larensen	8					20.
F. Mullen est	28					70.
M. L. Morris	150	130				570.
H'y Muir	2					5.
Forward	3758.75	488.98	41	10	21	10297.31

1063 1896.

	Alf., 2.50.	Gr., 1.50.	Gr., 2.00.	V. & O., 2.50.	Sun.	
Forward	3758.75	488.98	41	10	21	$10,297.31
Tim Mareno	1.70					4.25
Wm. Miles	4					10.
B. Moran	1					2.50
Jas. McDermott	171.16		40			507.90
W. H. McClintock	8					20.
S. Newman	338.53					846.32
R. M. Osborn	34					85.
A. J. Packard	12.89	36				86.22
Ben Peterson	11	15				50.
J. L. Pearsall	62					155.
Mrs. E. Parker	21.30	2				56.25
Henry Russ	12					30.
Geo. R. Stewart	153.54	14				404.85
H. F. Sherman	90					225.
C. A. Stanisfer	114					285.
Stewart Bros	99.36					248.40
L. Sweitzer	45	28				154.50
A. G. Stanisfer	20			2		55.
Trefts Bros	30			1		77.50
J. E. Thompson	14.72					36.80
Jacob Trefts		4				6.
Wilmans Bros	515			20		1337.50
Ralph White	18					45.
J. H. Wilde	4					10.
A. J. Worthington	30					75.
Winter Bros	35	25				125.
Frank Winter	36			2		95.
J. R. Weddle	5					12.50
John D. Yates	45					112.50
Forward	5690.95	612.98	81	35	21	15456.33

1064 1896.

Orestimba Section.

5690.95	acres	@	$2.50	$14,227.37
612.98	"	"	1.50	919.46
81	"	"	2.00	162.00
35	"	"	2.50	87.50
6	"	"	5.00	30.00
15	"	"	2.00	30.00
6441.93	"			$15,456.34

1065 1896.

	Alf., 2.50.	Gr., 1.50.	Gr., 2.00.	V. & O., 2.50.	Sun.	
Las Garzas section:						
Albert Albertson	9					22.50
Albert Anderson	10					25.
Hans Anderson	8					20.
John Allen	36					90.
Antonio Arnsbile	16	5		4	3 gard.	72.50
Wm. Brough	35					87.50
N. E. Bunker	420	18				1077.00
Tom Banks	48	16				144.
Geo. Banbauer	35				25 new alf.	118.75
Kelly Baulwan	59					147.50
Peter Bladt	15					37.50
John Beshtel	20	85				177.50
Mrs. Geo. Crittendon	8					20.
Mrs. M. Coile	6			2		20.
John Cordoza	98	55				327.50
J. W. Carrick	48					120.
W. S. Castner	20	33	12		12 corn	147.50
Henry Danker		25				37.50
Al Draper	22				10 new alf.	67.50
Geo. De Monts	46					115.
J. De Sozo	8					20.
John De Monts	20					50.
W. A. Dunning	26					65.
M. Degugan	12			2	2 gard. 10 corn	55.
J. H. Edwards	98	30				290.
J. D. Flory		14				21.
R. B. Fenton	32			4		90.
F. Games	8½					21.25
Giovanni & Hale	114	17				310.50
W. Ghinizo				2		5.
L. Hill	35		19			125.50
Forward	1312½	298	31	14	62	3928.00

1066 1896.

	Alf., 2.50.	Gr., 1.50.	Gr., 2.00.	V. & O., 2.50.	Sun.	
Forward	1312½	298	31	14	62	$3928.00
W. H. Howard	505					1262.50
" & M. L. Hunt	200				8 new alf.	512.
Andrew Hansen	20					50.
Oeter Hansen					16 new alf.	20.
Hans Jepson	34					85.
Mads Jepson	8					20.
Hans Knight	55					137.50
Chris Krogh	53					132.50
A. L. Kuns	13					32.50
Chas. Kruger	30	50				150.
W. L. Leek	86					215.
J. F. Lassing	79	80				217.50
Peter Lorenson	10				8 new alf.	35.
Morehead Bros	31				6 " "	85.
Dan McMillan	28	28				112.
John F. Mott	7					17.50
R. Menzell					6 corn	6.
J. Noano	12	4		1		38.50
Simon Newman	318			3		802.50
A. J. Newman	11				30 new alf.	65.
Andrew Olsen	9					22.50
James Peterson	27					67.50
F. M. Preston	29			2	19 new alf.	106.25
Jos. Pfitzer	15					37.50
Jasper Parnell	21					52.50
John Russell	71					177.50
Mrs. J. C. Strugeon	52					130.
E. J. Strugeon	50				7 new alf.	133.75
C. R. Stahlman	9			2		27.50
Mrs. S. E. Tinnin	124	26				349.
Al Virgo	46					115.
L. P. Werner	15					37.50
Forward	3280½	486	31	22	162	9275.50

1067 1896.

	Alf., 2.50.	Gr., 1.50.	Gr., 2.00.	V. & O., 2.50.	Sun.	
Forward	3280½	486	31	22	162	$9275.50
Geo. Whitworths	100				10 new alf.	262.50
Henry Whitworths	68					170.
John A. Wilson	40					100.
D. M. Ward	53	20				162.50
Wm. Worthy		10				15.
Jos. Woodworth	4					10.
	3545½	516	31	22	172	$9995.50

1068 1896.

Summary, Los Garzas Section.

3545½	acres	alfalfa	@ $2.50	$8863.75
516	"	grain	" 1.50	774.00
31	"	"	" 2.00	62.00
22	"	V. & O.	" 2.50	55.00
5	"	gar.	" 5.00	25.00
131	"	new alf.	" 1.25	163.75
8	"	" "	" 1.50	12.00
12	"	corn	" 2.00	24.00
16	"	"	" 1.00	16.00
4286½	"			$9995.50

1069 1896.

	Alf., 2.50.	Gr., 2.00.	Gr., 1.50.	Or., 2.50.	Gard., 5.00.	Sun.		
San Luis section:								
Crittenden Bros.	16							40.
Eugene McCabe	4½							10.63
J. Q Drummond	70	25	Corn	6		10	corn	250.
Roger Fahy	18	10	6					74.
Hansen & Knudsen	5							12.50
W. B. Hardman	120	21	12			20	corn	400.
B. W. Jeffers				1		4	S. G. 1.50	8.50
B. W. Jeffers Jr	1½	5½				4	spuds $1	18.75
J. E. Jeffers			4			4	grain @ 1.00	10.00
R. C. Lathrop	22½							56.25
Pasquad Mareno	25	Corn 1	4 S. G.		½	12	@ 1.00	96.
" "					½	11	spuds @ $1.	
J. S. Middleton		Corn 5		½				10.63
Anton Nunes					2½	11	@ 1.00	23.50
Andy Pfitzer	68							170.
Frank Pfitzer	20	12						74.
Rafael Palette	2½			½	1	2½	new alf.	
D. W. Reeves	5			1	1	7½	@ $1	24.50
						1½	@ $1	24.50
D. J. Reeves	2	Beans 1½		1				10.

1070 1896.

Summary, San Luis Section.

379.75	acres	alfalfa	@ $2.50	$949.38
48.50	"	grain	" 2.00	97.00
30	"	"	" 1.50	45.00
4	"	"	" 1.00	4.00
2 25	"	new alf.	" 2.00	4.50
9.75	"	orchard	" 2.50	24.38
5	"	garden	" 5.00	25.00
52.25	"	corn	" 2.00	104.50
33	"	"	" 1.00	33.00
24	"	spuds	" 1.00	24.00
588½	"			$1310.76

1071 1896.

	Alf., 2.50.	Gr., 2.00.	Gr., 1.50.	Or., 2.50.	Gard., 5.00.	Sun.		
Los Banos section:								
C. D. Bamnauer	25		12 @	1.25				$77.50
S. N. Beaty	4					4	corn, etc.	18.
Fred Backle	4					5	corn	78.
N. Bibby	4		22	10				11.50
E. Bibby	3	2						11.25
W. E. Burch	4½							2.50
J. L. Berry	1							11.88
C. B. Crocker	4¾					1	spuds	10.
L. H. Cutting		S. G.						
Isaac Cox		9				4	corn	37.
Andrew Cavala	10	4	spuds		1	2	corn	40.
Joe Cimmele	27			2	½			75.
Anton Cazzi	2				1			10.
Joe Cab	4			1				12.50
						11	beans	
R. Cabhro	13½			1	1	3	corn	
						6½	spuds	82.25
Chas. Cathran		183½						762.25
C. D. Dudley	8					8		36.
D. B. Dudley	17							42.50
W. H. Devoe	4½							11.25
Antonio Ferra	1				1	2	spuds	11.50
A. B. Graham (Beebe)	5							12.50
						20	spuds	
John Garrison	15	3	corn			3	corn	86.50
A. Genelly	3							7.50
T. B. Gurrin	10		7			10	spuds	55 50
Nels Greyson			60 @	1.25				75.
John Holm	12			3½		2	corn	40.75
Mrs. R. Hammond	3							7.50
		S. G.						
P. R. Hanson	4½	20						51.25
Owen Hughes	70							175.
B. Hughes	6							15.
H. J. Huhn		85	25					207.50
Forward								2084.88

1072 1896.

	Alf., 2.50.	Gr., 2.00.	Gr., 1.50.	Or., 2.50.	Gard., 5.00.	Sun.		
Forward								2084.88
Joe Hooper	4	6	spuds					22.
H. L. Hansen			60 @	1.25				75.
G. Johnson	18							45.
Jameson Bros	25							62.50
Z. G. Jameson	41	3	S. G. @	1.50				107.
L. Jensen		4						8.
M. P. Kundsen	10					10	spuds	45.

	Alf., 2.50.	Gr., 2.00.	Gr., 1.50.	Or., 2.50.	Gard., 5.00.	Sun.		
Sam Kee					1			5.
Mrs. J. Livingston	3	12				3	corn	34.50
F. T. Langridge	8	3				2	corn	28.
John Long	9							22.50
R. Lavenson		14						28.
M. Lean	4	2						14.
Mrs. G. Lavemberg	9	@ 1.25		3 @	1.25			15.
Rob't Miller		6	corn			6	corn @ $1	18.
Frank Marcus	8½	6½	spuds		1	1½	corn	42.25
C. Mallico	2	4	spuds	1	½	1½	corn	21.
Jas. Marchen	2	Corn 4	15	3	½	3	beans	51.50
J. D. McCarthy	8½							21.25
Pasqual Marino								
John Nelson	10	12		1½		4	corn	56.75
H. B. Newton	10							25.
Byron Newton	5½							13.75
Bernard Negra	22	6	spuds		1			72.
John Narcissa	8½			1				23.75
John Olsen, No. 1	5	S. G. 3						18.50
John Olsen, No. 2		4						8.00
E. Pelatos	6	Spuds 3½		1½		Corn 3½		29.
Wm. Phillips	20	10						70.
Peterson Bros.	15							37.50
W. A. Pemberton	5							12.50
C. E. Perry	7							17.50
Forward								3291.38

1073

1896.

	Alf., 2.50.	Gr., 2.00.	Gr., 1.50.	Or., 2.50.	Gard., 5.00.	Sun.		
Forward								3291.38
Thos. Patton	3½							6.25
Carl Rodemer	5							12.50
John Rodemer	3							7.50
Raphael Rocco		9	spuds					18.
M. F. Robinson	2½	S. G. 2		1½				14.
John Rask	2	S. G. 17½						40.
Chas. Reutter	2			3				12.50
Grant Smith	5							12.50
J. J. Sweeney	35							87.50
O. E. Smith	60	80		2				315.
Mrs. E. J. Smith	23					2	corn	59.50
Mike Sarbo	8½	7			½	2	spuds	39.75
						3	corn	
Frank Sarbo	12	9			½	6	spuds	68.50
F. Sarbo & Pfitzer		10	spuds					20.
A. Sarubi	17			5	1			60.

	Alf., 2.50.	Gr., 2.00.	Gr., 1.50.	Or., 2.50.	Gard., 5.00.	Sun.		
P. Snyder	....	90	200	6	..	12	spuds.....	519.
N. Soña	3	3½	corn	2	1	....		24.50
S. A. Smith	25	.....	.....	.....	...	....		62.50
C. W. Smith	10	3	corn	....	....	....		31.
B. F. Soper	8	8	.....	.....	....	....		36.
J. E. Smith	6	5	@ 1.25	.....	...	..		21.25
						2½	spuds	
Joe Tascano	7	8	corn	.....	1	2	beans.....	47.50
Pasqual Toreno	1	10½	spuds	.....	1	1	corn.....	29.50
J. E. Tucker	5	... ..	.....	.....	..	..		12.50
W. H. Wood	25	.....	.....	25	.....	....		125.
H. Thornton	6	.....	.....	.....	....	....		15.
R. H. Wood	26	14	corn	.....	....	6	spuds.....	105.
Wagganer Bros	100	.....	.....	.....	...	..		250.
C. W. Wood	6	10	.....	18	...	8	spuds.. ...	88.
Chas. Whiting	10	.....	.....	.....	....	30	corn.....	55.
C. M. Watkins	.....	12	.....	....	....	....		24.
O. C. Wily	10	.....	.. ....	.....	....	....		25.
Forward	.....	.....	.....	.....	...	...		5535.63

1074 1896.

	Alf., 2.50.	Gr., 2.00.	Gr., 1.50.	Orch., 2.50.	Gard., 5.00.	Sunds.		
								$5535.63
P. Synder	6	... .	.....	.....	....	....		15.
T. L. Baldwin	2	.....	.....	.....	....	....		5.
Hans Hansen	5	.....	.....	.....	....	....		12.50
F. Stunman	.....	.....	4	@1.25	....	....		5.
Jim Toscano	3	.....	.....	.....	.	....		7.50
Joe Lange	6	.... .	.....	.....	....	....		15.

1075 1896.

Summary of Los Banos Section.

976½	acres alfalfa	@ $2.50	$2440.63
583½	" grain	" 2.00	1167.00
589	" "	" 1.50	883.50
153	" "	" 1.25	191.25
88	" V. & O.	" 2.50	220.00
14½	" garden	" 5.00	72.50
83½	" corn & beans	2.00	167.00
62½	" " "	1.00	62.25
134½	" potatoes	2.00	269.00
15	" "	1.00	15.00
51½	" salt grass	2.00	103.00
3	" "	1.50	4.50
2754	"		$5595.63

1076 1896.

	Alf., 2.00.	Gr., 1.50.	Gr., 1.25.	Gr., 1.00.	V. & O., 2.00.	Corn, etc.	Sun.	
Dos Palos section:								
A. O. Armstrong	2					2		6.00
M. E. Armstrong	½	1			4	1		11.50
A. Anderson		2				1		5.00
C. A. Bibler	1½				2	5		17.00
	2							
H. Buerer	4½	@ $1.				12	@ $1	
		14½	30½			12½	@ $1.25	92.
P. O. Baldwin		16				25		49.
						10	@ $1.00	
A. Brown	3	11	25		3	12	@ 1.25	84.75
T. A. Bennett	2½			12½	1	10	@ $1	29.50
N. S. Bergh	3½			1	4	9	" "	25.
						30	@ $1.25	
Luther Batter	8			23	2	20	@ $1.00	100.50
J. W. Bowen	6			2	1½			17.
J. W. Bowen, Hall Place	6				1	15		29.
J. Van Benen					½	8	@ $1	9.
B. Buckley	4½				1			11.
O. M. Baldwin	3	2		5		5½	@ $1	19.50
J. Bailey				6	1½			9.50
A. J. Bird		1						1.50
G. L. Brady					½			1.00
R. D. Connor	2				1	2	@ $1	8.
A. B. Cass	5½			16	½			28.
H. Cass	9			20	2	9	@ $1	56.
						6	@ $1.25	
W. A. Cause						2½	spuds, 1.50	11.25
						8	beans @ $1	
P. Cafurds	4					2	gard. @ $2	20.
A. P. Champlin	7½				1½	12	corn @ $1	30.
H. P. Christianson		1						1.50
Place & Christian		½						.75
Mrs. Porthena Dye	4		2	½	1	4	@ $1.25	18.
E. S. Davis	27		100			5	@ $1	184.
J. A. Fisher	1	5		4	2	10	@ $1.	27.50
Chas. Foreman	8		75	8	1			119.75
John Fausch	3	7				7	@ $1	23.50
Forward								1046.00

1077 1896.

	Alf., 2.00.	Gr., 1.50.	Gr., 1.25.	Gr., 1.00.	O. & V., 2.00.	Corn, $1.00.		
Forward								$1046.00
Wm. B. Gring	7½			12	3	1¼		34.75
H. E. Goodwin		7½		7		15		33.25
P. Gable	3	4½			1	5		19.75
E. Gable		5			½	9		17.50
Wm. B. Gable	1	3		2½	1	12		23.

	Alf., 2.00.	Gr., 1.50.	Gr., 1.25.	Gr., 1.00.	O. & V., 2.00.	Corn, $1.00.		
John George	5	12	....	....	3	7	.....	41.
R. R. George	....	.....	....	....	1	....	.....	2.
S. H. Goodwin	....	.....	....	....	1	....	.....	2.
J. O. Hoyle	7	3	....	....	1½	5	.....	26.50
C. F. Hobbs	7½	.....	....	9½	1	14	.....	30.50
R. J. Hoyle	4	4	....	....	1	4	.....	20.
S. D. Hunt	1	.....	....	10	1	3	.....	17.
J. M. Hall	1	4	....	6	1	6½	.....	22.50
F. Hadley	....	.....	....	11	1	....	.....	13.
L. S. Hadley	....	2½	....	....	½	....	.....	4.75
V. W. Herman	....	.....	....	12	½	2½	.....	15.50
						2½		
Wm. Jones	4½	.....	....	10	1	11	@ 1.25	37.25
						6	@ 1.25	
D. F. Johnson	8	.....	16	....	½	6	.....	50.50
A. Julius	6	3	..	....	3	4	.....	26.50
Kate B. Jones	....	.....	....	14	1	....	.....	16.
Mrs. E. A. Lang	3	1½	....	....	2	2	.....	14.25
Jno. D. Lang	7	1	....	20	4	2	.....	45.50
S. C. Lowe	7	....	....	18	5	12	.....	54.
Jennie Lenharts	....	1	....	....	....	7	.....	8.50
D. F. Merritt	....	4½	....	....	....	....	.....	6.75
W. J. Mitchell	....	....	....	60	..	....	.....	37.50
R. S. Mount	10	.....	....	8½	..	4	@ $1.25	
						6½		40.
John Malm	1	5	....	6½	1	6	.....	24.
Peter Michel	2½	2	....	3	½	3	.....	15.
Wm. Mumby	....	.....	....	6½	....	2½	.....	9.
Mrs. J. McMullen	3	.....	....	11	1	8	.....	27.
F. Mickelson	....	13½	8	....	....	....	.....	30.25
Forward	....	.....	....	....	....	....	.....	1811.00

1078 1896.

	Alf., 2.00.	Gr., 1.50.	Gr., 1.25.	Gr., 1.00.	Or., 2.00.	Corn, 1.00.		
Forward	....	....	....	....	....	....	.....	$1811.00
G. W. Morgan	2	15	4	2½	1	4	.....	40.
F. P. Miller	5	20	...	....	6	40	.....	92.
F. B. Marks	6	20	....	..	3	3	.....	51.
Wm. Mumby	....	.....	....	9	½	5	.....	15.50
H. D. Madris	....	5	..	....	1	....	.....	9.50
A. D. McPherson	....	....	....	2	..	....	.....	2.00
C. O Miller	....	.....	....	15	..	....	.....	15.
G. Neff	3	....	...	2½	4½	18	.....	35.50
A. Norman	½	2	..	2	1	10	.....	18.
L. Nehf	4	.. ..	....	7½	3	....	.....	21.50
W. H. Parder	5½	.....	....	6	3	7½	.....	30.50
						8	@ 1.25	
T. S. Payne	5	.....	.....	....	3	3	.....	29.
G. W. Prym	4½	4	...	16	½	13	.....	45.

	Alf., 2.00.	Gr., 1.50.	Gr., 1.25.	Gr., 1.00.	Or., 2.00.	Corn, 1.00.		
A. McPherson	5	....	5	....	2	4	.....	24.25
Henry Plack	....	1½	5½	1	1	1	....	13.13
H. Prentice	3	3	.....	.....	3	10	....	26.50
L. G. Peck	4	.....	.....	.....	1½	.....	.....	11.
G. F. Russell	2	....	....	....	....	4	.....	8.
T. J. Reynolds	7	5	...	12	1	10	.....	49.50
T. V. Root	....	.....	....	....	....	2½	.....	2.50
J. G. Ralston & Co.	....	.....	....	5	.....	.....	.....	5.
J. G. Ralston	....	....	...	6½	1½	... ...	.....	9.50
A. J. Robinson	....	.....	....	18	.....	.....	.....	18.
E. A. Shain	9	5	..	27	2	5	....	61.50
D. A. Stocking	2	3	....	....	2	2	.....	14.30
J. W. Stul	23	6	...	....	½	40	@ 1.25 . ..	106.
W. B. Shain	3	.....	...	...	....	.....	.....	6.
P. J. Shaffer	4	.....	...	...	....	.....	.....	8.
H. G. Schwab	....	.....	....	11½	....	.....	.....	11.50
D. B. Shain	3½	.....	....	.....	....	1¾	.....	8.75
J. D. Smith	....	1½	...	....	....	.....	.....	2.25
						10	@ 1.25	
P. Runany	2	.....	...	19	½	20	....	56.50
Forward	....	.....	....	....	....	.....	....	2657.88

1079 1896.

	Alf., 2.00.	Gr., 1.50.	Gr., 1.25.	Gr., 1.00.	Orc., 2.00.	Corn, 1.00.		
Forward	....	.....	....	....	....	.....	.....	$2657.88
A. Talbot	4	.....	44	11	1	9	.....	85.00
G. Talbot	....	.....	....	..	1	.....	....	2.
G. & J. Talbot	....	.....	....	5	....	.....	.....	5.
John Watson	3	...	...	20	....	14	.....	40.
J. W. Wilkins	5	1¼	....	....	....	6½	.....	19.12
W. B. Wilson	2	.....	...	....	5	3	....	17.
W. H. Whitaker	..	.....	....	....	1½	....	.....	3.
F. P. Young	2½	.....	....	6	....	6½	.....	17.
								$2846.50

1080 1896.

Summary, Dos Palos Section.

323	acres alfalfa, @	$2.00	$646.00
218¾	" grain, "	1.50	328.13
334½	" " "	1.25	418.12
123	" V. & O., "	2.00	246.00
60	" grain, "	.62½	37.50
467	" " "	1.00	467.00
525	" corn, "	1.00	525.00
143	" " "	1.25	178.75
2194½	"		$2846.50

1081 *Miscellaneous Charges for Irrigation for Fiscal Year Ending Nov. 25, 1896.*

	Alf., 2.50.	Gr., 2.00.	C., B., & P., 1.50.	Gr., 1.00.	C., B., & P., 2.00.	C., B., & P., 1.25.	C., B., & P., 1.00.	Gard., 5.00.	
C. Cordello					25¼				51.50
W. Jones							14		14.
B. Hoyle						13	13		29.25
H. G. Schwab							12		12.
H. Benice							5		5.
P. Tunny							5		5.
F. Hooper					2				4.
—— Toreno					2½				5.
A. Cozzio	2							1	10.
—— Middleton		5							10.
J. Heckey	1								2.50
C. M. Dickinson	1½						2		5.75
E. L. Dickinson			c. 12						18.
W. Sato		3½							7.
J. W. Hough	4								10.
L. Manducco							5½		5.50
H. M. Call	2								5.
L. H. Cutting				100					100.
—— Saibo					5				10.
	10½	8½	12	100	35½	13	56½	1	309.50
—— Vedick, 2½ ac. wild land @ $1.60									4.
									313.50

1082 *Irrigation of Miller & Lux for Season Ending June 30, 1896.*

Poso farm.

3300 acres alfalfa,	@ 2.50	$8250.00		
600 " "	1.25	750.		
700 " new alf.	1.25	875.		
250 " hay	1.25	312.50		
90 " grain	1.25	112.50		
½ of grain irrigated by tenant, or balance for 60 acres @ 1.25, charged to them @ 62½ cts.		37.50		
600 acres grain & corn	1.25	750.		
5540				11,087.50

Dos Palos farm.

350 acres alfalfa	@ 1.25	437.50		
100 " "	2.50	250.		
6700 " grain & hay	1.25	8375.00		
300 " new alf.	1.25	375.		
300 " corn	1.25	375.		
7750				9,812.50

Los Banos farm.

5634 acres alfalfa	@ 1.25	7042.50		
984 " "	2.50	2460.		
900 " grain	1.25	1125.		
7518				10,627.50
				$31,529.50

1083 *Summary of Irrigation Ac. for Year Ending Nov.* 25, 1896.

	Acres.	*Amount.*
Orestimba section	6440.93	$15,456.33
Las Garzas "	4286.50	9,995.50
San Luis "	588.50	1,310.76
Los Banos "	2754.	5,595.63
Dos Palos colony	2194.25	2,846 50
Miscellaneous	239.25	313.50
Miller & Lux	20808.	*31,527.50*
	37311.43	67,045.72

Deductions.

Middleton	ac. chg.	5	ac. gr.	@ $2	10.	
W. B. Hardman	"	45	" alf.	" 2½	112.50	
P. Tarano	"	2½	" corn	" 2	5.	
					52.50	127.50
					37258.93	66,918.22
O. E. Smith, reduction		80 gr.	@ 50c		40.	
P. Matheson,	acc't '94–'5				8.	
J. R. Huddleston,	"				25.	
O. E. Smith,	"				40.	
J. D. Lenz,	"				15.63	
F. E. Potter,	"				37.50	
H. G. Hall,	"				12.50	
						178.63
						66,739.59

Miller & Lux Summary.

Alfalfa, 2 crops,	4384 ac.	@ $2.50	$10,960.00
" 1 "	7584 "	" 1.25	9,480.00
Grain, hay etc. 1 crop,	8840 "	" 1.25	11,050.00
	20808 "		
½ of grain irrigated by tenants			37.50
			$31,527.50

1084 *Recapitulation for Year Ending November* 25, 1896.

	Acres.		*Amount.*
Alfalfa	10557.95	@ $2.50	$26,394.87
" new	325.25	2.00	650.50
" "	8.	1.50	12.00
" "	131.	1.25	163.75
Grain	747.50	2.00	1,495.00
"	1966.73	1.50	2,950.10
"	487.50	1.25	609.38
"	628.00	1.00	628.00
"	60.	.62½	37.50
Garden	31.50	5.00	157.50
V. & O.	154.75	2.50	386.87
"	123.	2.00	246.00
Corn, B. & P.	330.	2.00	660 00
"	156.	1.25	195.00
"	674.75	1.00	674.75
"	12.	1.50	18.00
Salt gr.	51.50	2.00	103.00
"	3.	1.50	4.50
Wild land	2.50	1.60	4.00
	16450.93		$35,390.72

Miller & Lux Summary.

Alfalfa, 2 crops,	4384	ac. @	$2.50	$10,960.00
" 1 "	7584	" "	1.25	9,480.00
Grain, hay etc. 1 crop,	8840	" "	1.25	11,050.00
	20808	"		
½ of grain irrigated by tenants				37.50
				$31,527.50

1085 *Statement of Irrigation by the San Joaquin & Kings River Canal & Irrigation Company for the Year Ending June 30, 1897.*

	Alf., 1.50.	Gr., 1.50.	V. & O., 2.00.	Gard., 3.50.	
Sunds. to irrigation, Oristimba section, season of 1896-'97:					
Anderson H. P.	3½	....	....	....	5.25
Aldridge W.	5	1	....	....	9.
Armstead Mrs. A.	27	....	....	....	40.50
Atley Geo.	½	....	....	....	.75
Barbour A.	3¾	....	½	....	5.87
Bailey J. V.	28	....	6	....	54.
Baker R.	16¾	....	....	....	25.13
Bowman H. A.	14½	....	....	....	21.75
Bell W. D.	122½	....	....	....	183.37
Brenley A. M.	....	9	....	....	13.50
Brown Bros.	24	7	....	....	46.50
Bhend John	2	....	....	....	3.
Bither B. J.	7	....	....	....	10.50
Crow J. T. & T. A.	93½	....	1½	....	143.25
Cory Mrs. C.	185½	....	....	....	278.63
Crow Geo. H.	118½	....	....	....	177.37
Cole H. M.	5	....	....	....	7.50
Crow J. T.	173½	35	2	....	316.38
Carson W. T.	21½	....	....	....	31.87
Crow & McDermit.	105½	....	....	....	158.63
Crow C. C	35	....	....	....	52.50
Crow J. B. estate.	117	9	....	....	189.
Crow B. H.	45½	....	....	....	68.25
Crow B. H. & F.	144½	....	....	....	216.75
Crow J. B. Jr.	155½	....	....	....	233.25
Crow J. B. est.	60	....	....	....	90.
Crow Belle & Tp.	100	....	....	....	150.
Crow E. W.	10	....	5	....	25.
Clary A. E.	48	....	....	....	72.
Draper W. F.	12	30	....	....	63.
Forward	1684	91	15		2692.50

1086 1887.

	Alf., 1.50.	Gr., 1.50.	V. & O., 2.00.	Gard., 3.50.	
Forward	1684	91	15	....	2692.50
Dalby S. B.	10	....	....	....	15.
Driscall Jas.	52½	14	2	...	102.25
Dodd J. S.	76	....	....	....	114.
Easton & McDermit	316½	....	....	....	474.75
Easton C. C.	96½	....	....	....	144.37
Engalom O.	....	1	....	....	1 50
Elfers John	17	....	....	....	25.50
Edelman C.	43½	....	....	....	64.88
Fink Bros	....	....	1	....	2.
Forney A.	54	....	....	....	81.
Fink W. F	170	....	....	....	255.
Gunn John	58	....	....	....	87.
Ghidoso V.	59	....	....	....	88.50
Gidding John	9	....	....	2	20.50
Giovanoni & Crow	5½	....	....	....	8.25
Harris J. P.	258½	25	....	....	424.87
Hartman H. A	....	10	....	....	15.
Hansen Henry	13	4	....	....	25.50
Hanston S. L.	4	....	....	....	6.
Haston E. W.	66	....	....	....	99.
Isom W. H.	52	....	7	....	21.88
Jensen C	50	20	....	....	105.
Jacobsen K. P.	....	9	....	....	13.50
Klehn Henry	....	9	....	....	13.50
Kahrt L. A.	134½	....	....	....	202.12
Kricke Mrs. A	4½	....	....	....	7.13
Kilburn Guy	102½	....	....	....	154.12
Levy & Dolorzensky	228½	....	....	....	342.38
Lansen H. C.	3	....	....	....	4.50
Love Fred	3	....	....	....	4.50
Lundy M. F	25	8	....	....	49.50
	18	....	....	....	27.
Forward	3566	191	25	2	5692.50

1087 1897.

	Alf., 15.0.	Gr., 1.50.	V. & O., 2.00.	Gard., 3.50.	
Forward	3566	191	25	2	5692.50
Lundy Wm	20	....	....	....	30.
Lorenzen H.	8	....	....	....	12.
Mullen F. estate	14	....	....	....	21.
Meirs Henry	2	....	....	....	3.
Morris M. L.	48	....	....	....	72.
Morino T.	1¾	....	....	....	2.62
Miles Wm	4	....	....	....	6.
Morems B.	1	....	....	....	1.50
Mayes A. A.	45	5	....	....	75.

	Alf., 1.50.	Gr., 1.50.	V. & O., 2.00.	Gard., 3.50.	
McDermit Jas.	222				333.
McCullogh B. F.	50				75.
McClintock W. H.	5				7.50
Newman, Simon	529½	50½			870.75
Osburn R. M.	26½	5			47.25
Packard A. J.		11			16.50
Peterson Ben	16				24.
Pearsall J. L.	27		18		76.50
Parker, Mrs. E.	16				24.
Russ & Huber.	29½				44.25
Russ And.	1				1.50
Russ Henry	12				18.
Stewart & Crow	105				157.50
South A. W.		14			21.
Stewart Geo. R.	88½				132.75
Stewart Bros	99½				148.88
Stonesifer A. G.	147½				221.62
Steffensen P.	3	2			7.50
Schweitzer I.	62	12½			111.75
Shawser S. A.	40				60.
Sherman H. F.	67½	30			145.88
Stanley C.	3				4.50
Trafts Bros.	35				54.50
Forward	5295½	321½	44	2	8519.75

1088 1897.

	Alf., 1.50.	Gr., 1.50.	V. & O., 2.00.	Gard., 3.50.	
Forward	5295½	321½	44	2	8519.75
Trafts Jacob.	4				6.00
Thompson J. E.	8				12.00
Williams C.	161	100			391.50
Winter Frank.	99	19			177.
White R	19				28.50
Weddel G. R.	5				7.50
Weddel John M.	4				6.
Westside Imp. Co.			150		300.
Wiseman W.	1½				2.25
Yates John D.	45				67.50
Totals Orestimba sec.	5631½	440½	194	2	$9518.00

1089 *Headquarters, June 30th, 1897.*

	Alf., 2.00.	Alf. St. Co., 1.50.	Alf., 1.50.	Alf., 1.25.	Gr., 1.50.	V. & O., 2.50.	Gard., 5.00.	Corn, 2.00.	
Sunds. to irrigation, Los Garzos sect.									8358.75
Albertson, A.	7			2					16.50
Anderson, A.		10							15.
Anderson, H.	8								16.
Allen, John.	32								64.
Amebile, A.	16					4	1		47.
Allen Bros.				24					30.
Bowles Tom.	38								76.
Bunker N. E.	420								840.
Brough Wm.	27								54.
Boulware K.	43				24				122.
Boulware & Worthington.					265				397.50
Coyle Mrs. M.	8					1	1		19.50
Cordoza John.	144								288.
Carrick J. W.	48								96.
Castner W. S.	26			25	8				95.25
Draper H. D.	7				25				51.50
De Suiza J.	8½								17.
De Monte John.	20			5					46.25
Dunning W. A	26								52.
De Monte Geo.	29		15						62 50
De Gregory M.	20					1			42.50
Edwards J. H.	99								198.
Florey J. D.	14			3					31.75
Fenton R. B.	32					4			74.
Gomes F. J.	8½								17.
Giovonni & Hale.	110		16						244.
Hanson A.	20								40.
Howard W. H.	355								710.
" "	200								400.
" "	152								304.
Hansen P.	16								32.
Forward	1923	10	31	59	322	10	2		4499.25

1090 1897.

	Alf., 2.00.	Alf. St. Co., 1.50.	Alf., 1.50.	Alf., 1.25.	Gr., 1.50.	V. & O., 2.50.	Gard., 5.00.	Corn, 2.00.	
Forward	1923	10	31	59	322	10	2		4499.25
Hill L.	54								108.
Hansen James				18					22.50
Jefsen M.	8½								17.
" Hans.	35								70.
Huhno Henry	13								26.

	Alf., 2.00.	Alf. St. Co., 1.50.	Alf., 1.50.	Alf., 1.25.	Gr., 1.50.	V, & O., 2.50.	Gard., 5.00.	Corn, 2.00.	
Krough Hans		55							82.50
" Chris	52			15					122.75
Krueger Chas	30								60.
" " Pumpkins	9								18.
Keaton Tom		16		12					39.
Leek W. S	78								156.
Lassing J. T	249								498.
Lorensen Pete	18								36.
Morehead Bros	27	10							69.
McMullen Dan	18								36.
Moot J. F		7							10.50
Menzel Rob	7				4				20.
Miller Peter		9		10					26.
Nunes John	8								16.
Noono Joseph	17			5				3	46.25
Nourse A. Z	35								70.
Newman S	317					3			641.50
Alsen Andrew	8½								17.
Peterson Jas	18								36.
Pfitzer Joe	25								50.
Preston F. M	50								100.
Parnel Jasper	25								50.
Russell John	72								144.
Sturgen Mrs. J. C	52								104.
" E. L	52								104.
Stahlman C. R	9			5		2			29.25
Pinnin Mrs. L. C	120					5			252.50
Forward	3330	107	31	124	326	20	2	3	7577.00

1091 1897.

	Alf., 2.00.	Alf. St. Co., 1.50.	Alf., 1.50.	Alf., 1.25.	Gr., 1.50.	V'O., 2.50.	Gard., 5.00.	Corn, 2.00.	
Forward	3330	107	31	124	326	20	2	3	7577.00
Virgo Alfred	46		15						114.50
Werner L. P		16							24.
Whitworth G. H	111								222.
" J. W	44			23		3			124.25
Wilson J. A	45								90.
Wood Mrs. D. M	73								146.
Worthington A. Z	18			4					41.
Worthy Wm					10				15.
Nourse Wm				4					5.
Totals Las Garzas sec	3667	123	46	155	336	23	2	3	8358.75

1092 1897.

	Alf., 2.00.	Gr., 2.00.	Gr., 1.50.	Gr., 1.25.	Or., 2.50.	Gard., 5.00.	B. & P., 2.00.	B. & P., 1.00.	
Sund. to irrig. San Luis section, season of 1896-'97:									
Crittenden Bros	16								32
				Corn.					
Drummond J. Q	72	10		15	6				194.
Fahey Roger	24								48.
Wardman W. B	79½		2					6½	168.50
Hansen & Knudson	5								10.
Jeffers B. W			4		1				8.50
" B. W. Jr	7								14.
Johnson P		5							10.
Lathrop R. C	6								12.
Mairino P	25	13	6			2	3	13½	114.50
Middleton J. S		5							10.
McCabe E	4½								8.50
Nunes Ant				2		1½	12		32.25
Pfister Fr	32	15							94.
" A	68								136.
				Corn					
Reeves D. J	2			4	1		7½		25.50
" D. W			1		1	1	6		21.
		Corn							
Verlick J		2							4.
Totals San Luis sec	340½	50	13	21	9	4½	28½	20	942.75

1093 1897.

	Alf., 2.00.	Gr., 2.00.	Gr., 1.50.	Gr., 1.25.	Gr., 1.00.	O. & V., 2.50.	Gard., 5.00.	Po., 2.00.	Po., 1.00.	
Sund. to irrig., Los Banos sec.:										
Anderson Gus	4									8.
Amabil A		3½					1½			14.50
Bambauer C. D	37									74.
Bibby E	3									6.
Beeby Wd	3									6.
Bibby N	4	16				10		3		71.
Beaty S. M	4									8.
Burch W. E	4½									9.
								Corn		
Baldwin T. L	2							1		6.
Beshly F	4									8.
Ceramelle G	27					2	½		8	69.50
Cole Jos	4					1				10.50
Cavala Andrew	13½	7					½	8		59.50
Cozza Ant	3						½			8.50
Cothran C. S	10	75	151							396.50
Cox Isaac	10	4	5							35.50

	Alf., 2.00.	Gr., 2.00.	Gr., 1.50.	Gr., 1.25.	Gr., 1.00.	O. & V., 2.50.	Gard., 5.00.	Po., 2.00.	Po., 1.00.	
								Beans		
Califro R	17					2	1	5		54.
Cutting L. H.				70						87.50
Davis W. H.	4½									9.
Duddley D. B.	17									34.
								Corn		
Duddley C. D.	8							8		32.
Dickinson M. E.	8									16.
Ferra Anton	1						½	2		8.50
Gardner J			15					2		26.50
									7	Corn
Gueren P. B.	10	7							10	71.
Garrison J. N.	15							12	Corn	54.
Greyson Nels				60						75.
Hughes Owen	70									140.
			Grass						Corn	
Hansen P.	10		10						6	41.
Hullen A. J.		15	90							165.
Hough J. W	4									8.
Forward	297½	137½	271	130		15	4½	41	31	1612.00

1094 1897.

	Alf., 2.00.	Gr., 2.00.	Gr., 1.50.	Gr., 1.25.	Gr., 1.00.	O. & V., 2.50.	Gard., 5.00.	Pot., 2.00.	Pot., 1.00.	
Forward	297½	137½	271	130		15	4½	41	31	1612.00
Hooper J	4									8.
Hammond R.	3									6.
Hansen H.	5									10.
Hicky John	1									2.
Holm John	18									36.
Johnson Geo	24	5								58.
Jensen L									6	6.
Jameson J L.	23									46.
								Grass		
Jameson Z. G.	41							3		88.
Jameson Sam					6			6		18.
Key Sam							1			5.
King Mrs. A	3									6.
Lathronica A.		3½								7.
Langridge F. T.	10									20.
Long John	9									18.
Longhe Joseph	8									16.
									Corn	
Livingston Mrs. L. J.	3	5							5	21.
								Bean-		
Leon M.	7							2		18.
Lorenson R.	10									20.
Mawrino F	17						1		4	43.
								Corn	Corn	
Marchese Jas	12						½	3	5	37.50

	Alf., 2.00.	Gr., 2.00.	Gr., 1.50.	Gr., 1.25.	Gr., 1.00.	O. & V., 2.50.	Gard., 5.00.	Pot., 2.00.	Pot., 1.00.	
Miller Rob								Corn 7		14.
McCarthy J. D	8½									17.
Marisso John	8					1½				19.75
Newton Byron	5									10.
Newton H. B	10									20.
Nelson John	10	10				1½		Corn 16½	Corn 6	82.75
Negrs Bern	20						1		5	50.
Olsen John No. 1	5		3							14.50
Olsen John No. 2	4									8.
Pedula H	10									20.
Pelatos E	10					1		1		24.50
Forward	586	161	274	130	6	19	8	79½	62	2380.00

1095 1897.

	Alf., 2.00.	Gr., 2.00.	Gr., 1.50.	Gr., 1.25.	Gr., 1.00.	O. & V., 2.50.	Gard., 5.00.	Pot., 2.00.	Pot., 1.00.	
Forward	586	161	274	130	6	19	8	79½	62	2380.00
Philips W. M	25	25							Corn 4	104.
Pemberton W. A	5									10.
Perry, Mrs. C. E	5		7						Corn 6	26.50
Patton Thomas	2½									5.
Peterson Bros	20									40.
Pfitzer & Pierre								3		6.
Roedemer C	5									10.
" John	3									6.
Rask John			Grass 16½			2				29.75
Robinson J. G	1½		Grass 2			1				8.50
Reutter Chas	2									4.
Sturla John		42	20							114.
Soto Wm		3½								7.
Smith S. A	25									50.
Smith J. E	6									12.
Smith Grant	5									10.
Smith Mrs. E. J	23									46.
Smith O. E	60		25			2				162.50
Smith C. W	13									26.
Snyder P	6		15						6	40.50
Swesuey J. J	35									70.
Sarbo F	18						½		5	43.50
" M	8½	Corn 2				1	½	3	2	34.
Sarubi A. estate	20					5	1	13		83.50
Sophia M	5					4	1			25.
Soper B. F	20		8							52.

	Alf., 2.00.	Gr., 2.00.	Gr., 1.50.	Gr., 1.25.	Gr., 1.00.	O. & V., 2.50.	Gard., 5.00.	Pot., 2.00.	Pot., 1.00.	
		Beans								
Poscano Joe	8	7½				1½	¾	4		46.
" Jas.	3									6.
Porreno Pasqu.							½	4		10.50
Thornton H'y	6									12.
Waigner J. & G.	90									180.
									Corn	
Whiting Chas.	10								30	50.
Forward	1016½	240¾	367½	130	6	35½	12½	106½	115	3712.25

1096 1897.

	Alf., 2.00.	Gr., 2.00.	Gr., 1.50.	Gr., 1.25.	Gr., 1.00.	O. & V., 2.50.	Gard., 5.00.	Pot., 2.00.	Pot., 1.00.	
Forward	1016½	240¾	367½	130	6	35½	12½	106½	115	3712.25
Wood C. W.	12		10			20			10	99.
Wood W. H	25					10				75.
Wood R. W.	26									52.
Wilkins J. P		15								30.
Walsh C. J						5				12.50
Yriegoyen J. M.	2					1				6.50
Mollice C.	2	5							4	18.
Totals Los Banos sec.	1083½	260¾	377½	130	6	71½	12½	106½	129	4005.25

1097 1897.

	Alf., 2.00.	Gr., 1.50.	Gr., 1.25.	Gr., 1.00.	Gr., .62½.	V. & O., 2.00.	Corn, 1.25.	Corn, 1.00.	
Sunds. to irrig., Dos Palos section:									
Armstrong A. O.	2							1½	5.50
Armstrong James	1½					4			11.
Anderson A.	1	1½		3½		1		3	12.75
Bergh N. S	3½	6				4		16	40.
Baldwin O. M.	3½		7½	11		1		10	39.37
Bennett F. A.	3½					1		11½	20.50
Biblar C. A	1½			10		1		12	27.
Brown A.	11					3			28.
Bird A. J	1								2.
Baldwin P. O	7	7				8		18	58.50
Bulkley B.	4½			1		1		1½	13.50
Bowen G. W.	11					1½		12	37.

	Alf., 2.00.	Gr., 1.50.	Gr., 1.25.	Gr., 1.00.	Gr., .62½.	V. & O., 2.00.	Corn, 1.25.	Corn, 1.00.	
Bowen F. L.	....	3½	....	9½	....	2	.....	6	24.75
Batton L.	14	...	36	2½	....	1½	.....	11	89.50
Bailey J. M.	...	2½	....	..	..	1½	.....	4	11.25
Bedell H.	....	....	....	....	..	....	.....	3	3.
Buerer H'y	6	7	37	....	..	½	31	17	125.50
Buriell W. C.	....	1	....	....	....	1	.....	....	3.50
Champlin	6½	....	....	5½	....	1	.....	15	35.50
Cass A. B.	5½	....	....	16	....	½	....	9	37.
Cass H.	7	1	...	..	....	1	.....	.....	17.50
Christensen H. P.	....	2	4	3	..	1	.....	2	15.
Conroe R. D.	2	....	....	6½	....	1	.....	2	14.50
						3	gard.		
Caffenetti P.	3	2	..	5	...	3	6	4½	38.
Canse W. A.	....	....	....	....	....	....	....	4	4.
Davis A. E.	..	....	....	....	....	..	....	9	9.
Dye, Mrs. P.	4	....	....	14	....	1	4	.....	29.
Dye & Bennett	....	....	....	....	....	....	.....	14	14.
Davis E. S	30	....	....	....	....	....	....	½	60.
Fisher F. A.	5	..	..	14	....	3	....	8	38.
Forward	134	33½	84½	101½	....	46¾	41	194½	864.62

1098 1897.

	Alf., 2.00.	Gr., 1.50.	Gr., 1.25.	Gr., 1.00.	Gr., .62½.	V. & O., 2.00.	Corn, 1.25.	Corn, 1.00.	
Forward	134	33½	84½	101½	....	46¾	41	194½	864.62
Foreman Chas.	12	....	....	8	....	1	.....	11	45.
Gaceli P.	7½	....	....	....	....	1	.....	2½	19.50
Godwin H. E.	5	3	5	5	....	1	.....	14½	42.25
George John	7	....	..	....	....	4	.....	9	31.
Gabel E. P.	5	....	....	....	....	½	.....	3½	14.50
Gabel Wm.	3½	1½	....	..	....	1	...	9½	20.75
George R. R.	....	....	....	....	....	1	.....	1	3.
Goodwin E. E.	....	....	....	14	....	....	.....	14	28.
Gring Wm. B.	6	....	....	..	....	2	.....	.....	16.
Gabel & Hadley	....	....	....	....	....	....	.....	36	36.
Goodwin S. H.	....	....	....	....	..	1	.....	8	10.
Goodwin H. E. & E. E.	....	....	8	....	....	....	.....	.....	10.
Hunt S. D.	2½	1½	....	18	....	1½	.....	20	47.75
Hubs C. F.	....	....	....	8	....	....	.....	7	15.
Hadley & Hehf.	....	....	....	....	....	....	5	25	31.25
Hadley L. S.	2½	....	....	....	....	½	.....	8	14.
Hoyle R. J.	7	..	....	....	....	1	.....	1	17.
Hall J. M.	5	....	....	5	....	1	.....	5	22.
Hadley Fred	3	....	....	10	....	1	.....	10	28.
Hoyle J. O.	10	....	....	....	....	2	.....	2	26.
Herman V. M.	3	....	....	....	..	½	.....	.....	7.
Herman & Sir	....	....	....	....	....	....	.....	7½	7.50
Hubs Jennie	2½	....	....	3	....	1	...	.....	10.
Hill F. C.	....	....	....	8	....	....	.....	.....	8.
Hill E.	....	¼	....	....	....	1	.....	.....	3.13

	Alf., 2.00.	Gr., 1.50.	Gr., 1.25.	Gr., 1.00.	Gr., .62½.	V. & O., 2.00.	Corn, 1.25.	Corn, 1.00.	
Julius A.	8	....	....	....	....	4	.....	3	27.
Jones Wm.	4½	....	7½	....	....	1	4	11½	36.87
Johnson D. F.	8	....	3	....	....	1	10	.....	34.25
Jones Kate B.	....	....	....	14	....	1	.....	.....	16.
Johnson & Prince	....	3	....	....	....	....	....	....	4.50
Law S. C.	7	....	....	14	....	5	.....	18	56.
Lewz J. D.	8	....	....	19	....	5	.....	4	49.
Forward	250½	43½	108	227½	....	85½	60	425½	1600.87

1099 1897.

	Alf., 2.00.	Gr., 1.50.	Gr., 1.25.	Gr., 1.00.	Gr., .62½.	V. & O., 2.00.	Corn, 1.25.	Corn, 1.00.	
Forward	250½	43½	108	227½	....	85½	60	425½	1600.87
Lenhoutz Jenny	1	....	....	....	....	....	.....	2	4.
Mount R. S	10	10	....	7	....	....	.....	5	47.
Merritt D. F.	3½	....	6	....	....	1½	.....	7	24.50
Moyer P. W.	2	....	....	14½	....	1	.....	5	25.50
Michel P.	2½	....	....	....	....	1	2	3	12.50
Marks F. B.	8	8	....	36	....	3	....	4	73.
Michelsen F.	6½	....	....	7	....	....	9	.....	31.25
Mumby Wm.	3½	....	....	5½	....	2	.....	6	22.50
Mumby Wm. Jr.	2½	....	....	....	....	½	.....	....	6.
Madearas H. D.	5	....	....	4½	....	....	.....	12	26.50
								9	
Malm	6	....	....	17	....	2	.....	5½	47.50
Miller F. P.	14	8	....	....	....	5	.....	.....	50.
McPherson A. D.	....	2½	....	....	....	1	5	5	17.
McMullen	7½	....	....	12	....	1	.....	9½	38.50
Miller F. & C. O.	....	....	....	4	....	....	3½	15	23.37
McPherson A.	5	....	....	1	....	2	5	1½	22.75
McLaughlin	1	....	....	1½	....	....	.....	.....	3.50
Norman A.	1½	....	8	4	....	½	.....	5½	23.50
Nehf L.	9	....	....	7	....	3	....	13	44.
Nehf Geo.	2½	4	....	2½	....	2½	.....	7	25.50
Nothingham	....	1½	....	....	....	....	....	.....	2.25
Obanion T.	....	1½	....	....	....	....	....	....	2.25
Payne G. W.	8	....	2	20	....	1	.....	8	48.50
Payne P. S.	5	....	....	....	150	2½	19	3	135.50
Payne W.	....	....	....	....	....	....	25	.....	31.25
Place & Christian	....	....	....	....	....	....	.....	5	5.
Prentice H.	5	2	....	....	....	3	.....	5	24.
Peck L. G.	6	....	....	....	....	1	.....	6	20.
Plock H.	1½	1½	....	....	....	½	20	1½	32.38
Plock & Dye	....	....	....	....	....	....	.....	13	13.
Pardee & Haskins	6½	3	....	4	....	1	.....	7	30.50
Russell G. F.	4	....	....	3	....	1	10	25	50.50
Forward	277½	85	124	377	150	121½	158½	614	2564.37

1100 1897.

	Alf., 2.00.	Gr., 1.50.	Gr., 1.25.	Gr., 1.00.	Gr., .62½.	V. & O., 2.00.	Corn, 1.25.	Corn, 1.00.	
Forward	377¾	85	124	377	150	121½	158½	614	2564.37
Reynolds P. J.	13	....	....	13	....	5	.....	10	59.
Rolston G. J	1½	....	....	....	....	½	.....	5	9.
Robinson A. J	....	....	....	....	....	....	.....	13	13.
Reed A. P.	4	....	3	....	....	2½	.....	.....	16.75
Roye B.	....	....	7	....	....	2½	.....	.....	13.75
Schwab H. G.	4½	....	....	16	....	2	.....	16	45.
Shain E. A.	9	....	....	32	....	2	.....	5	59.
Steale J. W.	28	....	....	1	....	1	10	19	90.50
Shain W. B.	3	....	....	..	....	1	.....	.....	8.
Scott W. G.	....	....	16	6	..	....	.....	5½	31.50
Smith C. B.	4½	....	....	....	....	2	.....	....	13.
Serr F.	....	2	....	1½	....	....	.....	1½	5.75
Smith J. D.	1	....	....	8	....	½	.....	4	15.
Stocking B. H.	4	....	....	5	....	2	.....	4	21.
Stocking W.	....	....	....	3	..	....	.....	....	3.
Talbot A.	4	....	43	8	....	1	15	9½	100.
Tranary P.	2	7	..	....	....	½	.....	10	25.50
Wilkins J. W.	7	....		....	....	....	.....	6½	20.50
Watson J.	11	....	....	23	....	1½	.....	25	70.50
Wilson W. B.	2	....	....	..	....	5	.....	4	18.
Whittacker W. B	....	....	....	26½	....	2½	.....	6	37.50
Watson E.	....	....	....	12	....	....	.....	.....	12.
Watson H. E.	....	11	2	4	....	....	.....	.....	23.
Young T. P.	2½	1	....	11	....	....	.....	27½	45.
Totals Dos Palos sec.	478¾	106	195	547	150	153	183½	783½	$3319.62

1101 *Miscellaneous Charges to Irrigation Acc't for the Year Ending Nov. 25, 1897.*

	Alf., 2.00.	Gr., 1.25.	C., B., & P., 2.00.	C., B., & P., 1.00.	V. & O., 2.50.	Gard., 5.00.	Corn, 1¼.	Och., 2.00.	
P. Toreno	....	....	2	.....	....	....	....	....	4.00
J. E. Ish.	....	....	5½	.....	....	....	....	....	11.
Mrs. P. Dye	....	....	.....	.....	....	....	....	1	2.
Fisher	....	....	.....	6	....	....	....	....	6.
W. Mumby	....	....	.....	1	....	....	....	....	1.
Hanscom	..	....	.....	.....	....	....	7½	....	10.
J. Moxon	....	....	11	.....	....	....	....	....	22.
Kerr D. P. C.	....	4	.....	.....	....	....	....	....	5.
Manducci	....	....	.....	5½	....	....	....	....	5.50
R. Pelatos	5	....	4	2	½	1	....	....	26.25
Chris. Matheson	10	....	.....	.....	....	....	....	....	20.
Totals miscellaneous	15	4	22½	14½	½	1	7½	1	112.75

1102 *Irrigation of Miller & Lux for Season Ending June 30, 1897.*

Posp farm.

2000 acres	alfalfa, Poso proper,	@ 2.50		5000.00
500 "	" " "	1.25		625.00
325 "	grain " "	1.25		406.25

Dos Palos branch.

700 "	alf. Corn camp	1.25	875.00
500 "	grain " "	1.25	625.00
100 "	corn " "	1.25	125.00
1500 "	alf. Colony ranch	1.25	1875.00
100 "	corn " "	1.25	125.00
Bal. for 150 acres grain irrigated by tenants at 1.25, charged to them at 62½.			93.75

Dos Palos farm.

350 acres	alfalfa, 1 crop	@ 1.25	437.50
100 "	" 2 "	2.50	250.
4800 "	grain & grass	1.25	6000.
1500 "	" " on Dugan & Barley c'p,	1.25	1875.

Dos Palos branch.

300 "	alf. from colony ditch	1.25	375.
300 "	corn from colony ditch,	1.25	375.
400 "	gr. Parsons r'ch	1.25	500.

Los Banos farm.

6298 "	alf. 1 crop	1.25	7872.50
300 "	" 2 "	2.50	750.
1100 "	grain	1.25	1375.
21173 acres.			$29,560.00

Summary.

Miller & Lux, 1897.

Alfalfa,	2400	@ 2.50	$6000.00
"	9648	1.25	12060.00
Gr. & hay	8625	1.25	10781.25
Corn	500	1.25	625.00
Their ½ of tenants	....		93.75
	21173		$29,560.00

1103 *Summary of Irrigation Account for the Fiscal Year Ending Nov. 15, 1897.*

	Acres.	*Amount.*
Orestimba section	6278	$9518.00
Las Garzas "	4355	8358.75
San Luis "	486.50	942.75
Los Banos "	2177.	4005.25
Dos Palos colony	2596.50	3319.62
Miscellaneous	66.	112.75
	15959.00	26,257.12
Miller & Lux	21173.	29,560.00
	37132.00	55,817.12

Deductions.

Ish, ac. chg.	5½	pot. @ 2,	11.		
Johnson	10½	alf. 2,	21.		
Mrs. Perry	3	" 2.	6.		
"	½	gr. 1.50	.75		
Cutting	14	" 1.25	17.50		
				33.50	56.25
				37098.50	55760.87

Carathies, ac. error '95–'6	37.50	
Guerrin " " "	10.	
Hanscom " " "	24.	
		71.25
Net irrig. in main & Dos P. C. canals		55,689.62
Irrigation from outside canal		3,122.00
Total irrig'n p'r ledger		$58,811.62

1104 *Recapitulation for Year Ending November 25, 1897.*

		Acres.			*Amount.*
	Alfalfa	5571.50	@	$2.00	11,143.00
Stan.	"	5764.75		1.50	8,647.12
	Young alf.	46.00		1.50	69.00
	" "	155.		1.25	193.75
	Grain	308.75		2.00	617.50
	"	832.00		1.50	1248.00
Stan.	"	440.25		1.50	660.37
	"	315.00		1.25	393.75
	"	555.00		1.00	555.00
	V. & O.	104.		2.50	260.00
Stan.	"	348.		2.00	696.00
	Garden	19.50		5.00	97.50
Stan.	"	2.00		3.50	7.00
	Corn B. & P.	157.		2.00	314.00
	"	7.50		1.33⅓	10.
	"	183.50		1.25	229.38
	"	965.75		1.00	965.75
	Grain	150.		.62½	93.75
		15925.50			26,200.87

Miller & Lux, 1897.

Alfalfa,	2400.	@	2.50	$6000.00
"	9648		1.25	12060.00
Gr. & hay	8625		1.25	10781.25
Corn	500		1.25	625.00
Their ½ of tenants	....			93.75
	37098.50 ac.			29,560.00
				$55,760.87

1105 *Statement of Amounts Which Would Have Been Produced by Irrigation for the Year Ending November 25, 1897.*

(1) On basis of rate fixed by Stanislaus county, and (2) on basis of regular rate.

	Acres.	*At Stanis. Co. rate.*		*At regular rate.*	
Gen'l: Alfalfa	5571.50	@ 1.50....	$8357.25	@ 2.50....	$13,928.75
" Stan. Co.	5764.75	" 1.50....	8647.12	" 2.50....	14,411.87
" young	46.	" 1.50....	69.00	" 1.50....	69.00
" "	155.	" 1.25....	193.75	" 1.25....	193.75
Grain	308.75	" 1.50....	463.13	" 2.00 ...	617.50
" special	832.	" 1.50....	1248.00	" 1.50....	1,248.00
" Stan. Co.	440.25	" 1.50....	660.37	" 2.00....	880.50
" special	315.	" 1.25....	393.75	" 1.25....	393.75
" "	555.	" 1.00....	555.00	" 1.00....	555.00
Vin'a & orchards	104.	" 2.00....	208.00	" 2.50....	260.00
" Stan. Co.	348.	" 2.00....	696.00	" 2.50....	807.00
Garden	19.50	" 3.50....	68.25	" 5.00....	97.50
" Stan. Co.	2.	" 3.50....	7.00	" 5.00....	10.00
Corn, beans & pot.	157.	" 1.50....	235.50	" 2.00....	314.00
" "	7.50	" 1.33⅓...	10.00	" 1.33⅓...	10.00
" "	183.50	" 1.25....	229.38	" 1.25 ...	229.38
" "	965.75	" 1.00....	965.75	" 1.00....	965.75
M. & L. tenants, grain	150.	" .75....	112.50	" 1.25....	187.50
	15925.50		$23,119.75		$35,242.25

Miller & Lux.

Alfalfa, 2 crops,	2400.	" 1.50....	3600.00	" 2.50....	6,000.00
" 1 "	9648.	" .75....	7236.00	" 1.25....	12,060.00
Grain & hay, 1 crop,	8625.	" .75....	6468.75	" 1.25....	10,781.25
Corn 1 "	500.	" .75....	375.00	" 1.25....	625.00
	37,098.50 ac.		$40,799.50		$64,708.50

1106 *Statement of Irrigation by the San Joaquin & Kings River Canal & Irrigation Company for the Year Ending June 30, 1898.*

	Alf., 1.50.	Gr., 1.50.	Corn, 1.50.	Or., 2.00.	Gard., 3.50.	
Sunds. to irrig., Oristimba sect.:						
Anderson, H. P	3½	....	....	....	....	5.25
Armistead H. V	....	9	....	....	....	13.50
" Mrs. A	37½	....	....	....	....	56.25
Alvarado Mrs. J	....	3	....	....	....	4.50
Atley Geo	½	....	....	....	....	.75
Beauchamp A. C	....	....	12	....	1	21.50
Bither B. J	7	....	....	....	....	10.50
Barbarri A	7	....	....	½	....	11.50
Bowman H. A	14½	....	....	....	....	21.75
Baker R	34	....	....	....	....	51.
Bailey J. V	90	....	....	....	....	135.
Brown Bros	24	20	....	3	....	72.
Bell W. D	84½	37	....	¾	....	183.75
Bhend Jno	2	....	....	....	....	3.
Crocco Jno	....	....	7	....	4	24.50
Cary, Mrs. E	132½	50	....	....	....	273.75
Crow J. T. & T. A	25	....	....	1½	....	40.50
Crow E. W	....	32	....	....	....	48.
Carson W. T	39	30	....	1	....	105.50
Crow B. H. & B. F	210	120	....	....	....	495.
Crow J. B. est	78¾	....	....	5	....	128.13
Crow J. T	198	115	....	2	....	473.50
Crow, J. B. Jr	255	91	....	....	....	519.
Crow, Belle & I. P	100	15	....	....	....	172.50
Crow C. P	105	....	....	....	....	157.50
Crow C. C	147	....	....	....	....	220.50
Crow G. H	55½	67	....	1	....	185.37
Driskell Jas	96	78	....	2	....	265.
Draper W. J	19	136	....	....	....	232.50
Dadd J. S	76	....	....	....	....	114.
Dalby S. P	46	9¾	....	....	....	83.63
Forward	1887	812¾	19	16¾	5	4129.13

1107 1898.

	Alf., 1.50.	Gr., 1.50.	Corn, 1.50.	Or., 2.00.	Gard., 3.50.	
Forward	1887	812¾	19	16¾	5	4129.13
Eddleman J. H	1	6	....	....	....	10.50
Enghlem O	17	20	....	....	....	55.50
Elfus Jno	43½	....	....	....	....	64.87
Eastin C. C	477	161½	....	....	....	957.75
Eddleman C	....	....	....	1	....	2.
Evans E	26	....	....	....	....	39.
Faney A	275	....	....	....	....	412.50
Fink W. F	58	15	....	....	....	109.50
Fink Bros	54	....	....	....	....	81.
Fink, Julius	....	12	....	....	....	18.
Gum, John	69	....	....	4	....	111.50
Garibaldi T. A	3	6	....	....	....	13.50
Gill, John	....	20	....	....	....	30.
Gill, Robt	5	4	....	....	....	13 50
Ghidozo V	16½	....	....	1	1	30.25
Hanscom S. L	60	84	90	....	....	351.
Harris J. P	3	15	....	....	....	27.
Hudleson, J. R	30	20	....	....	....	75.
Hartman H. A	24	....	....	....	....	36.
Heston E. W	32¼	....	....	....	....	48.38
Haile R. C	20	....	....	....	....	30.
Huber & Russ	29	....	....	....	....	43.50
Isom W. H	50	39	....	1	....	135.50
Jacobsen H. P	4	....	....	....	....	6.
Kilburn Guy	300	90	....	....	....	585.
Kahit L. H	4¾	....	....	....	....	7.12
Klehn, Henry	169	456	....	....	....	937.50
Kricke Mrs. A	70	57¾	....	....	....	191.63
Levy & Dabizinsky	5	....	....	....	....	7.50
Love, Fred	31	50	....	....	....	121.50
Lundy Wm	20	....	....	....	....	30.
Lorensen, Hans	8	....	....	....	....	12.
Forward	3791¾	1869	109	23¾	6	8723.13

1108 1898.

	Alf., 1.50.	Gr., 1.50.	Corn, 1.50.	Or., 2.00.	Gard., 3.50.	
Forward	3791¾	1869	109	23¾	6	8723.13
Lawson H. C	3	....	....	....	....	4.50
Lundy M. F	20	10	....	....	....	45.00
Lee, J	....	11	....	....	....	16.50
Langhead D. F	15	....	....	....	....	22.50
Miles Wm	4	....	....	....	....	6.
Mayes A. A	43	12	....	1	....	84.50
Maulen F. est	28	....	....	....	....	42.
Morris M. L	90	240	....	....	....	495.
Miller & Fenton	47	....	....	....	....	70.50
Morrison Mrs. L	....	12	....	....	....	18.
Moran B	1	....	....	....	....	1.50

	Alf., 1.50.	Gr., 1.50.	Corn, 1.50.	Or., 2.00.	Gard., 3.50.	
McDowell P.	....	15	...	.....	....	22.50
McDermitt Jas.	218	35	....	.....	....	379.50
McClintock W. H.	8	....	....	.....	....	12.
McCumber L. L.	22	22	...	....	...	66.
Newman S.	446	483½	...	.....	....	1394.62
Osborn R. M.	15	20	....	.....	....	52.50
Pearsall J. L.	63	.....	8	18	....	142.50
Parker Mrs. E.	37½	40	....	.....	....	116.25
Peterson Ben	26	15	....	.....	....	61.50
Packard A. J.	20	35	..	.....	....	82.50
Russ A.	1	....	....	.....	....	1.50
Russ, Hy.	12	....	....	.....	....	18.
Rask Jno.	20	....	....	.....	....	30.
St. Clair, Chas.	2½	....	....	.....	....	3.38
Stonesifer A. G.	147½	....	....	2	....	225.62
Stewart Geo. R.	58	114	....	5	....	268.
Sweitzer I.	66	34	....	.....	....	150.
Stanley C.	2½	....	....	.....	....	3.75
Stewart Bros.	104	25	....	.....	....	193.50
Steffenson P	3	10	....	1	....	21.50
Shuman H. F.	65½	50	....	.....	...	173.62
Forward.	5380½	3052¾	117	50¾	6	12947.87

1109 1898.

	Alf., 1.50.	Gr., 1.50.	Corn, 1.50.	Or., 2.00.	Gard., 3.50.	
Forward.	5380½	3052¾	117	50¾	6	12947.87
Snyder C. B.	40	....	....	.....	....	60.
Sturgeon Mrs. J. C.	18	....	....	.....	....	27.
Sheldon & Eastin	42½	....	....	.....	....	63.75
South, A. W.	38	....	....	.....	....	57.
Thompson J. E.	13½	....	....	.....	....	19.83
Trifts Jacob	4	....	....	.....	....	6.
Trifts Bros	37	....	....	1	....	57.50
Trugrave Mrs.	7	....	....	1	....	12.50
Wilmans Bros.	541	.....	20	15	....	871.50
White R	18	.....	..	1	....	29.
Winter, Frank.	113	150	....	2	....	398.50
West Side Imp. Co.	.....	.....	....	145	....	290.
Wiseman W.	.....	6	...	.....	...	9.
Yates, Jno. D.	45	....	....	....	....	67.50
Totals Orestimba sec.	6297½	3208¾	137	215¾	6	14917.00

	Alf., 2.00.	Alf., 1.25.	Gr., 2.00.	Gr., 1.50.	Corn, 2.00.	Corn, 1.50.	Or., 2.50.	Alf. St. Co., 1.50.	
Sund. to irrigation, Los Garzos section:									
Albertson, Albert	4			4½					14.75
Anderson, Albert									
Anderson H.	8		60					10	15.
Allen Bros.	25								136.
Allen & Demont	82		70	10	12				50.
Allen John	28			7					343.
Bowles T.	43								66.50
Bunker N. E.	327		171			80		20	116.
Brough Wm.	35								1116.
Boulware K.	35		60	32					70.
Bambauer Geo	35								238.
" R	25	10			1½				70.
Bladt P.	12								65.50
Bennett E. P.	7								24.
Bambauer Mrs. A			32						14.
Bizzinni D.	70								64.
Ballinger Mrs. G. W.	5				20		1½		140.
" B. H					12				53.75
Biddment M.	2								24.
Coyle Mrs. M.	7								4.
Carrick J. W.	48						2		19.
Castner W. S.	57		39		14				96.
Caren, John	8		70						229.
Crittenden Bros.	16								156.
" Mrs. G	7								32.
Draper A. D.	65								14.
De Suiza J.	8½								130.
Danker J. H.				80					17.
De Mont, Jno. Jr.	25								120.
Dunning W. A	45		2½						50.
Dunne C. A	35		5		20				95.
Forward	1064½	10	509½	133½	79½	80	3½	30	3693.50

	Alf., 2.00.	Alf., 1.25.	Gr., 2.00.	Gr., 1.50.	Corn, 2.00.	Corn, 1.50.	Or., 2.50.	Alf. St. Co., 1.50.	
Forward	1064½	10	509½	133½	79½	80	3½	30	3693.50
De Mont Mrs. Geo.	20		2						44.
Edwards J. H.	105		31						272.
Flory J. D.	17								34.
Fenton R. B.	32						4		74.
Games F. J.	8½								17.

	Alf., 2.00.	Alf., 1.25.	Gr., 2.00.	Gr., 1.50.	Corn, 2.00.	Corn, 1.50.	Or., 2.50.	Alf. St. Co., 1.50.	
Giovannoni Mrs. C.	39	.....	.....	.....	....	..	3	....	85.50
" " G.	86	.....	.. ..	.....	....	....	....	....	172.
Hansen, And.	25	.....	.....	.....	....	....	....	....	50.
Howard, W. H.	355	.....	.....	.....	....	....	....	..	710.
"	152	.....	.....	.....	....	....	....	....	304.
"	200	.....	.....	.....	40	....	....	..	480.
Hansen P.	24	.....	.....	.....	....	....	....	....	48.
Hill L..	55	.....	.....	.....	....	....	....	....	110.
Hansen Jas.	18	.....	.....	.....	....	....	....	....	36.
Hansen, H. T.	.....	.... .	55	.....	....	....	....	....	110.
Hansen & Largmire.	.....	.....	.....	.....	15	....	....	....	30.
Jefson, Mads	8½	.....	.....	.....	....	....	....	....	17.
Jepsen, Hans.	35	.....	.....	.....	....	....	....	....	70.
Kuns H. L.	12	.....	.....	.....	....	....	....	....	24.
Krough Hans.. ...	.....	.....	.....	.....	....	..	...	45	67.50
" Chris.	70	.....	.. ...	.....	....	....	....	....	140.
Keaton Tom.	.....	.....	.....	.....	....	....	....	35	52.50
Kerr T. F.	152	.....	18	.....	....	....	....	....	340.
Lux W. L.	78	.....	58	.....	....	....	....	....	272.
Lassing J. F.	237	.....	345	....	..	....	....	....	1164.
Lorenson P.	18	.....	.....	.....	....	....	....	....	36.
Morehead Wm.	37	.....	.....	.....	....	....	....	10	89.
McMillan D.	28	.....	35	.....	....	....	....	....	126.
Menzel R.	25	.....	45	.. ..	....	....	....	..	140.
Miller P.	.....	.....	.....	.....	..	....	....	25	37.50
Mathison C.	46	.....	.....	.....	....	....	....	....	92.
Nanns Jno.	8½	.....	.....	.....	....	....	....	....	17.
Forward	2956	10	1098½	133½	134½	80	10½	145	8954.50

	Alf., 2.00.	Alf., 1.25.	Gr., 2.00.	Gr., 1.50.	Corn, 2.00.	Corn, 1.50.	Or., 2.50.	Alf. St. Co., 1.50.	
Bro't forward	2956	10	1098½	133½	134½	80	10½	145	8954.50
Noons Jos.	25	.....	.....	.....	.....	.....	.....	...	50.
Nouse A. J.	.....	.....	.....	.....	8	.....	.....	9	29.50
Nourse W...	16	.....	.....	8	....	.....	.....	....	44.
Newman S.	282	.....	110	62	....	.....	.....	....	877.
Olsen Andrew.	8½	.....	.....	.....	....	.....	.....	....	17.
Peterson Jas.	48	.....	.....	.....	....	.....	.....	....	96.
Pfitzer Jos.	26	.....	.....	.....	....	.....	.....	....	52.
Preston F. M.	70	.....	.....	.....	....	.....	.....	....	140.
Parnell J.	25	.....	.....	.....	....	10	.....	....	65.
Petermors Mrs. M.	.....	.....	8	.....	....	.....	.....	...	16.
Packard A. J.	100	.....	.....	.....	....	.....	.....	....	200.
Russell John	35	.....	35	.....	....	.....	.....	....	140.
Sturgeon Mrs. J. C.	52	.....	60	.....	....	.....	.....	....	224.
" E. L.	59	.. ..	.....	.....	4	...	....	...	126.

	Alf., 2.00.	Alf., 1.25.	Gr., 2.00.	Gr., 1.50.	Corn, 2.00.	Corn, 1.50.	Or., 2.50.	Alf. St. Co., 1.50.	
Stahlman C. R.	15						1½		33.75
Tinnin S. E.	151								302.
Virgo Alf.	58								116.
Wilson J. A.	59								118.
Whitworth G. H	111								222.
" J. W.	66						4		142.
Werner L. P								16	24.
Worthington A. J.	51			17½					128.25
Worthy Wm.				20					30.
Worthington & Boulware			515	150					1255.
Totals Los Garzes sec'n.	4213½	10	1826½	391	146½	90	16	170	13402.00

1113 1898.

	Alf., 2.00.	Gr., 2.00.	Gr., 1.50.	Or., 2.50.	Grass, 1.50.	Corn, 1.00.	Pot., 1.00.	Gard., 5.00.	
Sunds. to *ittigation* San Luis sect.:									
Amibile A.		12½					10		35.
Crittenden B.		20							40.
" S. O		35							70.
Drummong J. Q.	70	60				18			278.
		c. 5							
Fahey R.	24	6	c. 10						85.
Handman W	78	45							246.
Hansen & Knudsen		10							20.
Jeffers B. W.				1	4				8.50
" B. Jr.	7	c. 3½							21.
Johnson P	8	18					7		59.
		c. 13							
Lathrop R. C.	6	13				6½			70.50
Middleton F.	4¾								9.50
Moreno Mrs. P.	16	6							44.
" P.	7½	13	5						48.50
McCabe, Eng.	5								10.
Nunes, Ant.									
Pfitzer, Andy	68								136.
		c. 25							
" Frank.	11	25							122.
Pelatos R	5	6					3	1	30.
Reeves D. W	5		7	1½			7½		31.75
		c. 2½							
" John.		5					2½		17.50
Totals San Luis sec.	315½	323½	22	2½	4	24½	30	1	1382.25

1114 1898.

	Alf., 2.00.	Gr., 2.00.	Gr., 1.50.	Gr., 1.25.	Corn, 2.00.	Corn, 1.50.	Corn, 1.00.	Orch., 2.50.	Gard., 5.00.	
Sunds. to irrigation Los Banos sect.:										
					Pots					
Amabile A	1½	.....	.....	....	2½	...	...	3	1	20.50
Burch W. E	4½	.....	.....	....	...	...	...	.....	.....	9.
Bibby N	7	50	.....	....	...	...	....	10	.....	139.
Bambauer C. D	30	...	.....	...	...	...	....	.....	.....	60.
Berry J	.....	4	.....	....	....	...	..	.....	.....	8.
Beaty S. N	4	....	.....	....	...	...	...	.....	.....	8.
Baker J	4	6	.. ..	....	....	....	....	.....	.....	20.
Baldwin T. L	5	.....	.....	....	...	....	....	.....	.....	10.
Bibby Enoch	4	....	.....	..	...	...	....	....	.....	8.
Beckwood M	2½	.....	.....	...	4	..	....	.....	.....	13.
Beebe W	4	....		.	3	...	....	.....	....	14.
Carlucci A	19	.....	.....	..	....	...	...	.....	.....	38.
Cali Jas	5	.....		...	....	...	....	.....	....	10.
Cali L	8	10	.....	...	....	..	....	....	... .	36.
							Pots			
Cininele G	20	10	.....	....	...	..	8	.....	½	70.50
							Pots			
Corale A	11	19	.....	....	...	....	9	.....	½	71.50
			Grass							
Cox Isaac	10	7	2	....	...	....	3½	.....	.....	40.50
Cutting L. H	.	.. .	.....	60	....	....	...	.....	.....	75.
							Pots			
Cathron Chas	10	273	60	....	....	....	22	.....	.....	678.
Cazzi Ant.	3	....	.....	....	....	..	....	.....	.....	6.
Califero R	14	5	..	....	....	....	....	.....	.....	38.
Dudley D. B	27	....	.....	...	....	....	....	.....	... .	54.
Dudley C. D	8	8	.....	...	....	....	8	.....	.....	40.
Devoe W. H	4½	.....	....	....	....	....	....	.....	... ..	9.
Dickinson M. E	8	.....	.....	...	....	....		.....	.....	16.
Degroff J. H	.....	5	.....	....	....	....	...	.....	.....	10.
Davinson Wm	.....	.....	.....	....	60	....	....	...	....	120.
					Pots					
Ferra Ant	1	6	.....	....	2½	....	....	.....	½	21.50
Grayson Nels	.....	.....	.....	25	..	....	....	.....	.....	31.25
Garrison J	1½	33	.....	....	....	....	13	.....	.....	82.
Guirin T	23	.....	.....	....	....	....	....	.....	.....	46.
Forward	239½	436	62	85	72	....	63½	13	2½	1802.75

1115 1898.

	Alf., 2.00.	Gr., 2.00.	Gr., 1.50.	Gr., 1.25.	Corn, 2.00.	Corn, 1.50.	Corn, 1.00.	Orch., 2.50.	Gard., 5.00.	
Forward	239½	436	62	85	72	....	63½	13	2½	1802.75
Hughes Owen	70	....	.....	..	...	...	...	.....	.....	140.00
Hansen P. R	12	7	6	...	....	....	....	.....	.....	47.
Hickey John	.....	4	.....	....	....	....	..	.....	.....	8.
Harispe Joe	.....	.....	.....	....	5	....	....	.....	.....	10.
Hooper Fred	4	.....	.....	....	....	....	...	.....	.....	8.

	Alf., 2.00.	Gr., 2.00.	Gr., 1.50.	Gr., 1.25.	Corn, 2.00.	Corn, 1.50.	Corn, 1.00.	Orch., 2.50.	Gard., 5.00.	
Hansen H	5				5					20.
Hammond R. F.	3									6.
Huhn Hno		425								850.
					Pots					
Huston Fred					8					16.
Holm Jno	16	2								36.
Harris Alf	4									8.
Ish. J. E	7									14.
			Grase							
Jameson Z. G	41		3							86.50
Jameson J. L	23									46.
Jensen L		10								20.
Kee Sam									1	5.
King Mrs. A	6									12.
Long John	9									18.
Louper J		20								40.
Lough Joe		8								16.
Lun M	15									30.
Langridge F	10									20.
Livingston J	18									36.
Latmicco A		4								8.
Minjaulet Jno	45				15					120.
					Pota					
Marckese	10	10			3			3		53.50
							Pots			
Mairino F	11	4					7½		1	42.50
Mallico C	8									16.
Miller R		6								12.
McLaughlin R					5					10.
McLeod E. P	2							3		11.50
							Pots			
Nigro B	30	10					10		1	95.
Forward	588½	946	71	85	113	..	81	19	5½	3663.75

1116 1898.

	Alf., 2.00.	Gr., 2.00.	Gr., 1.50.	Gr., 1.25.	Corn, 2.00.	Corn, 1.50.	Corn, 1.00.	Or., 2.50.	Gard., 5.00.	
Forward	588½	946	71	85	113	...	81	19	5½	3663.75
Nelson Jno	5	58								126.
Narsizo Jno	9½									19.
Newton H. B	10									20.
Pemperton W. A	5									10.
Patton T	2½									5.
Peterson Bros	20	5								50.
Phillips Wm	20	25								90.
Pfitzer Andy		10								20.
Pelatos E	9½	2			2					27.
Padula A	5	7½								25.
Palmtag C. F	5									10.
Pricala Jim	2½									5.
Perry Mrs.	5	5								20.
Rouse D. M	9									18.

	Alf., 2.00.	Gr., 2.00.	Gr., 1.50.	Gr., 1.25.	Corn, 2.00.	Corn, 1.50.	Corn, 1.00.	Or., 2.50.	Gard., 5.00.	
Rademer Jno	3									6.
" Carl	5									10.
Reutter Chas	4									8.
Rasmussen R	11				4					30.
Sweeney J. J	35									70.
Satto Wm		4								8.
Storer D. M		4					2			10.
Satto H'y		4								8.
Sarbo M	8½	8					Pot. 8		½	43.50
" F. M.	18						Pot. 5		½	43.50
Soper B. F	28									56.
Sofia Nick	4					2		4	½	20.50
Smith Mrs. E. J	33									66.
Smith C. W	13									26.
Spaduferri K	20	15					Pot 8	5	1	95.50
Snyder P		30					30	6		105.
Smith J. E	6									12.
Smith G	5									10.
Forward	890	1123½	71	85	119		134	34	8	4736.75

1117 1898.

	Alf., 2.00.	Gr., 2.00.	Gr., 1.50.	Gr., 1.25.	Corn, 2.00.	Corn, 1.50.	Corn, 1.00.	Or., 2.50.	Gard., 5.00.	
Forward	89-	1123½	71	85	119		134	34	8	4736.75
Smith O. E	20	25	25			70		2		237.50
Smith S. A	6									12.
Tuscano J. V	6									12.
" Jas	8	7					Po.7 3		½	42.50
Torano P	1½	5			2				1	22.
Thornton H	6	35								82.
Waggoner J. & G	100									200.
Wood C. W	30							60		210.
" W. H	25	15						10		105.
" R. W	25									50.
" Uriah	45									90.
Whiting C	10									20.
Welch C. J								5		12.50
Wade C. F	5									10.
Wiley O. C						8				12.
Wiley Mrs. E. C						30				45.
Yrigayon J. M	2	8								20.
Totals Los Banos sec	1179½	1218½	96	85	121	108	144	111	9½	$5919.25

1118 1898.

	Alf., 2.00.	Gr., 1.50.	Gr., 1.25.	Corn, 1.25.	Corn, 1.00.	Or., 2.00.	Fall crop, 1.00.	
Sunds. to irrigation, Dos Palos section:								
Anderson, A	2½	3	...	1	3	.....	1	14.75
Armstrong Jas	2	.....	.....	.....	.....	.....	4	8.
" A. O	2	1½	.....	.....	1½	.....	.....	7.75
Allen W. B	.....	.....	.....	.....	.....	.....	1	1.
Burrell W. R	1	1	.....	.....	.....	.....	.....	3.50
Bulkley B	4½	.....	.....	.....	2	1	.....	13.
Batten L	16	25	...	.....	20	3	.....	95.50
Bibler C. A	2	8	.....	.....	8	1	1½	27.50
Bailey Jas	.....	2	.....	.....	6	2	.....	13.
Baldwin O. M	3	7½	5	5	9½	1	.....	41.25
Bergh N. S	3½	6	.....	.....	8	4	.....	32.
Biddell H	1	5	.....	3	7	.....	.....	20.25
Bennett F. A	2½	.....	.....	.....	1	.....	.....	6.
Brown A	11	.....	.....	.....	.....	3	.....	28.
Baldwin P. O	10	.....	.....	20	9	...	4	58.
Burrer M	8	15	.....	28	5	1	.....	80.50
Brady G. L	.....	14	.....	.....	.....	.....	.....	21.
Bowen Mrs. A	8	4	.....	.....	10	.....	.....	32.
Cafardi P	6½	.....	...	.....	11½	Gard 1½	6½ 5	39.
Champlin A. P	6	6	.....	.....	15	2	.....	40.
Cass A. B	5½	.....	.....	.....	9	½	.....	21.
Cass H	6	1½	.....	.....	1½	.....	.....	15.75
Christensen H. P	2	5	.....	.....	2	1	.....	15.50
Christensen & Whitaker	.....	.....	.....	12	.....	.....	.....	15.
Connor R. D	3½	4	...	3	2½	½	.....	20.25
Champlin H. S	.....	2	.....	.....	.....	.....	.....	3.
Cass Mrs. F. M	1	.....	.....	.....	.....	.....	.....	2.
Dye Mrs. P	4	18	..	5	13	.....	.....	54.25
Davis E. S	34	.....	.....	.....	.....	.....	.....	68.
Davis A. E	2	.....	.....	.....	.....	.....	.....	4.
Fisher J. A	5	14	...	.....	14	.....	.....	45.
Forward	152½	142½	5	77	158½	21½	23	845.75

1119 1898.

	Alf., 2.00.	Gr., 1.50.	Gr., 1.25.	Corn, 1.25.	Corn, 1.00.	Or., 2.00.	Fall crop, 1.00.	
Forward	152½	142½	5	77	158½	21½	23	845.75
Foreman Chas	7	34	.....	.....	23½	2	.....	92.50
Gring W. B	6	.....	.....	.....	1	2	.....	17.
Goodwin H. E	8	2½	20	.....	12	1	.....	58.75
Goodwin H. E. & E. E	.....	.....	.....	16	.....	.....	.....	20.
Goodwin E. E	2	.....	.....	.....	12	.....	.....	16.
Goodwin S. H	8½	.....	.....	.....	14	.....	5	36.
Gable Peter	6½	1	.....	.....	2	1	.....	18.50

	Alf., 2.00.	Gr., 1.50.	Gr., 1.25.	Corn, 1.25.	Corn, 1.00.	Or., 2.00.	Fall crop, 1.00.	
Gable Wm. B.	4			15	6	1		34.75
Bable E.	5				3½	½		14.50
Gable & Hadley					3½			3.50
Genge John	10	8			20	4		60.
George R. R.		1						1.50
Hayle J. O.	13				2			28.
Hill I. C		3	6		10	1		24.
Hobbs J.	2½	3			2½	1		14.
Hobbs C. F.		6			5½			14.50
Hunt S. D.	3½	7½	5		16	½		41.50
Hadley L. S.	3	6			6	½		22.
Hayle R. E.	7							14.
" E.					12			12.
Hadley Fred.	5	18						37.
Hadley & Hehf.					11			11.
Hall J. M.	5	3			2			16.50
Herman V. W.	2				4			8.
Haney B. F.	3	27					1	47.50
Hill E.	1				1			3.
Hadley W. C.	8	7			7			33.50
Julius A.	7	6			4		1	28.
Jones Kate B.		12½			9	1		29.75
" Wm.	1½	4½	5	24	3			49.
Johnson M. C.		3	3	3				12.
Kushing F. J.		1½						2.25
Forward	271	297	44	135	351	37	30	1666.25

1120 1898.

	Alf., 2.00.	Gr., 1.50.	Gr., 1.25.	Corn, 1.25.	Corn, 1.00.	Or., 2.00.	Fall crop, 1.00.	
Forward	271	297	44	135	351	37	30	1666.25
Kuckenbaker F.		5						7.50
Lewe S. C.	7	1½	16	18		5		68.75
Lenhouts Mrs. G.		7			3½			14.
Muchelsen F.	6½	7		9				34.75
Malm C.	5				4	1		16.
" Jno.	1	6			4	½		16.
Merritt D. F.	3½	3			5	1½		19.50
Medians H. D.	5	4			12		1	29.
Miller F.	2	12½			3	½		20.75
" F. P.	20				3	5		53.
" F. P. & F.				44				55.
" C. O.		5			5			12.50
Mumby Wm. Jr.	2½				6	½		12.
" Wm.	6	9			5	2		34.50
Marks F. B	22	32			23½			115.50
Moyer G. W.	2½	4			3	1		16.
Michel P.		3			3			7.50
Mount R. S.	10	7			4			34.50
McMullin Mrs. J.	7½				11	1	6	34.

	Alf., 2.00.	Gr., 1.50.	Gr., 1.25.	Corn, 1.25.	Corn, 1.00.	Or., 2.00.	Fall crop, 1.00.	
Nehf L.	10	2	....	.....	8½	4	.....	39.50
Nehf Geo.	6½	16	....	.....	23½	5	.....	70.50
Norman A.	1½	4	....	8	1½	½	.....	21.50
Norman & Ralston	3	.....	....	.....	5	1	.....	13.
Nattingham M. F.	1½	....	....	.....	3½	.....	.....	6.50
O'Banion T.	1½	2½	....	6	1	.....	.....	15.25
Payne T. S.	5	.....	....	3	3	.....	3	19.75
Peck L. G.	6	.....	....	....	.....	1	.....	14.
Plock H.	2½	15	3	.....	.....	.....	.....	31.25
Pardee W. H.	8	.....	....	.....	12	.....	4	32.
Prentice H.	7	5	....	.....	7	.....	3	31.50
McPherson A. D.	1½	.....	....	.....	9½	½	.....	13.50
McPherson & Brown	.....	.....	...	6	....	.....	.....	7.50
Forward	425½	447½	63	229	520½	67	47	2588.75

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1898.

	Alf., 2.00.	Gr., 1.50.	Gr., 1.25.	Corn, 1.25.	Corn, 1.00.	Or., 2.00.	Fall crop, 1.00.	
Forward	425½	447½	63	229	520½	67	47	2588.75
McPherson A.	5	.....	3	.....	1	2	....	18.75
Pike J. E.	.....	2½	3	....	.....	.....	.....	7.50
Pitts H.	.....	8	...	.....	.....	.....	.....	12.
Payne Walter	.....	2	...	.....	.....	.....	.....	3.
Russell G. F.	4	.....	...	...	20	.....	.....	28.
Russ Geo.	9	12	2	2	10	1		53.
Reynolds T. J.	11	5	....	.....	9	.....	5	43.50
Reed A. P.	4	.....	2	4	1	2½	.....	21.50
Rays B.	.....	.....	...	5	.....	2	.....	10.25
Stocking D. A.	4	6	...	...	5	....	2	24.
Scott W. G.	3	.....	12	5	.....	.....	5	32.25
Schwab H. G.	4½	13	....	.....	15	2	...	47.50
Shain W. B.	3	3	...	.....	.....	.....	1	11.50
Shain E. A.	9	30	...	.....	18	....	2	83.
Smith C. B.	4½	.....	...	.....	¾	2	.....	13.75
Smith J. D.	2	.....	...	2	10	.....	.....	16.50
Steel J. W.	20	15	....	.....	20	.....	.....	82.50
Serr Fred.	2	1	....	.....	.....	.....	.....	5.50
Stocking W. E.	2	1½	....	.....	.....	.....	.....	6.25
Talbot A.	4	13	...	.....	10	1	.....	39.50
Talbot & Mount	.....	10	....	.....	.....	.....	.....	15.
Wilkins J. W.	7	.....	....	.....	6½	....	.....	20.50
Watson John	5	20	...	2	30	.....	.....	72.50
Whitaker W. B.	1	3	5	.....	13	2	....	29.75
Wilson W. B.	2	.....	...	.....	3	.....	2	9.
Watson H. E.	.....	26	...	.....	.....	.....	4	43.
" Ezra L.	.....	.....	...	....	6	.....	.....	6.
Young T. P.	3½	.....	6	4	20	1	.....	41.50
Totals Dos Palos sec.	535	618½	96	253	718½	82½	68	3385.75

1122 *Miscellaneous Charges to Irrigation Acc't for Year Ending November* 25, 1898.

	Alf., 2.00.	Stan. Alf., 1.50.	Gr., 2.00.	Gr., 1.50.	C., B., & P., 2.00.	C., B., & P., 1.00.	V. & O., 2.00.	
F. Mickelson						5		5.00
R. Califero			7					14.
C. W. Smith			5					10.
J. Cordozo	143							286.
M. De Gregory	20				2			44.
H. H. Hill	45			25	20			167.50
L. Bowen							1½	3.
H. Hansen		4						6.
T. Moreno		1¾						2.62
A. Mines		2						3.
Totals miscellaneous.	208	7¾	12	25	22	5	1½	541.12

1123 *Irrigation for Miller & Lux for Season Ending June* 30, 1898.

Dos Palos farm.

100 acres alfalfa	@ $2.00		$200.00	
350 " "	1.00		350.00	
4800 " grass & hay	1.00		4800.00	
1500 " " "	Dugain & barley camps		1500.00	
300 acres corn, Colony ditch			300.00	
300 " alf. " "			300.00	
400 " Gr. Parsons			400.00	
670 " " Place & Co			670.00	
				8520.00
8420				

Santa Rita ranch.

800 acres grain & grass	@ 1	800.00	
			800.

Poso farm.

2000 acres alf. poso.	@ 2	4000.00	
500 " " "	1	500.00	
920 " gr. & corn	1	920.00	
160 " sorghum	1	160.00	
4 " alf. Italian		4.00	
10 " grain "		10.00	
700 old alf. corn camp		700.00	
300 new " "		300.00	
850 grain & corn "		850.00	
2000 alf. Colony r'ch		2000.00	
300 new alf. "		300.00	
400 grain "		400.00	
			10,144.00
8144			

Los Balos farm.

5334 ac. alf.	@ 1.			
380 " "	2	5334.00		
900 " grain	1.	760.00		
		900.00		
L. B. 6614				6,994.00
D. P. 8420				
S. P. 800				26,458.
Poso 8144		[8420]*		
		[8144]*		
23978 acres		[6614]*		
		[23178]*		
		[800]*		
		[23978]*		

Summary.

Miller & Lux alf.	2480.00 acres @ $2.00		$4,960.00
" " "	9788.00 " 1.00		9,788.00
" " grain, hay, corn etc.,	11710.00 " 1.00		11,710.00
	23,978.		26,458.

1124 *Summary of Irrigation Acc't for the Fiscal Year Ending Nov. 25, 1898.*

Orestimba section	9864.75	$14,917.00
Las Garzas section	6863.50	13,402.00
San Luis "	722.75	1,382.25
Los Banos "	3072.50	5,919.25
Dos Palos colony	2371.75	3,385.75
Miscellaneous	281.25	541.12
	23176.50	39,547.37
Miller & Lux	23978.	26,458.00
	47154.50	$66,005.37

Deductions.

Mrs. J. Livingston, 3 ac. alf. @ $2	6.00		
A. J. Nouse 2 ac. corn @ $2	4.00		
B. Jeffers Jr. 4 ac. P. @ $1	4.00		
		9.	
			14.00
Net bal. Main & Dos Palos canals		47145.50	65,991.37
W. Munday, ac. o-cgh. ac. '96, '7			1.00
			65,990.37
Outside canal			11,131.70
			$77,122.07

[* Figures enclosed in brackets erased in copy.]

1125 *Recapitulation of Irrigation Acc't for the Year Ending November 25, 1898.*

	Acres.		*Amount.*
Alfalfa	6448.25	@ $2.00	$12,896.50
Young alf.	10.	1.25	12.50
Stan. "	6475.	1.50	9,712.50
Grain	3380.50	2.00	6,761.00
"	1152 50	1.50	1,728.75
"	181.	1.25	226.25
Stan. gr.	3208.75	1.50	4,813.12
Orch. & V.	129.50	2.50	323.75
"	84.	2.00	168.00
Stan. O. & V.	215.75	2.00	431.50
Garden	10.50	5.00	52.50
Stan. gard.	6.	3.50	21.00
Corn B. & P.	287.50	2.00	575.00
"	198.	1.50	297.00
Stan. C. B. & P.	137	1 50	205.50
"	253.	1.25	316.25
"	986.25	1.00	986.25
Grass	4.	1.50	6.00
	23167.50		39,533.37
Miller & Lux alf.	2480.	2.00	4,960.00
" " "	9788.	1.00	9,788.00
" " grain, hay, corn etc.	11710.	1.00	11,710.00
	47145.50		$65,991.37

1126 *Statement of Amounts Which Would Have Been Produced by Irrigation for the Year Ending November 25, 1898.*

(1) On basis of rate fixed by Stanislaus county, and (2) on basis of regular rate.

	Acres.	*At Stanislaus Co. rate.*		*At regular rate.*	
Gen'l: Alfalfa	6448.25	@ 1.50	$9672.37	@ 2.50	$16,120.62
" young	10.	" 1.25	12.50	" 1.25	12.50
" Stan. Co.	6475.	" 1.50	9712.50	" 2.50	16,187.50
Grain	3380.50	" 1.50	5070.75	" 2.00	6,761.00
" special	1152.50	" 1.50	1728.75	" 1.50	1,728.75
" "	181.	" 1.25	226.25	" 1.25	226.25
" Stan. Co.	3208.75	" 1.50	4813.12	" 2.00	6,417.50
Orch. & vin.	129.50	" 2.00	259.00	" 2.50	323.75
" " special	84.	" 2.00	168.00	" 2.00	168.00
" " Stan.Co.	215.75	" 2.00	431.50	" 2.50	539.37
Garden	10.50	" 3.50	36.75	" 5.00	52.50
" Stan. Co.	6.	" 3.50	21.00	" 5.00	30.00
Corn, beans & pot.	287.50	" 1.50	431.25	" 2.00	575.00
" " " special	198.	" 1.50	297.00	" 1.50	297.00
Corn, beans & pot. Stan. Co.	137.	" 1.50	205.50	" 2.00	274.00
Corn, beans & pot. special	253.	" 1.25	316.25	" 1.25	316.25
Corn, beans & pot. fall	986.25	" 1.00	986.25	" 1.00	986.25
Grass	4.	" 1.50	6.00	" 1.50	6.00
	23,167.50 ac.		$34,394.74		$51,022.24
Miller & Lux.					
Alfalfa, 2 crops	2480.	" 1.50	3720.00	" 2.50	6,200.00
" 1 "	9788.	" .75	7341.00	" 1.25	12,235.00
Grain, hay, corn, etc.	11710.	" .75	8782.50	" 1.25	14,637.50
	47,145.50 ac.		$54,238.24		$84,094.74

1127 (Endorsed :) Statement of irrigation for three years ending November 25, 1898. The San Joaquin & Kings River Canal & Irrigation Co. U. S. circuit court, N. dist. of Cal. The San Joaquin and Kings River Canal and Irrigation Co. *vs.* The County of Stanislaus *et al.* No. 12257. Complainant's Exhibit No. 11. E. H. H. examiner. Published and filed December 1st, 1899, Southard Hoffman, clerk.

1128 COMPLAINANT'S EXHIBIT No. 12.

Statement of cost of construction of San Joaquin canal to December 31, 1873, and betterments since constructed therein, with cost of construction of parallels and extensions. This includes only items actually charged to construction and which can be identified from the accounts as properly belonging thereto, and does not include any charges for construction which cannot be positively so identified from the accounts alone.

		Paid S. J. & K. R. C. Co., cost of works to date of purchase.....		$119,335.29
		" John Bensley *et al.* in stock (15,000 shares at $7.50) for water rights &c.		112,500.00
Ledger	A. 19.	Cost of construction by this company to Dec. 31, 1873, as per ledger account	264,638.47	
		Less work on "Upper canal" as per Exhibit 7.	9,026.23	
				255,612.24
Journal	126.	Salary of M. L. Stangroom from Dec. 24, 1873, to Dec. 31, 1873.....		100.00
"	127.	Construction in 1873, as per superintendent's report of January 16, 1874	19,775.19	
		Less S. H. Marriner.. 45.15		
		Traveling expenses.. 49.00		
			94.15	
				19,681.04
"	131.	Construction in 1873, as per Superintendent Stangroom's report of Jan. 31, 1874, item of J. E. Mason.....		98.15
"	135.	Paid to Miller & Lux on construction up to Dec. 31, 1873, as per Superintendent Chandos' report of Jan. 31, 1874.....		8,411.97
Ledger	A. 200.	Salary of M. L. Stangroom from Sept. 1, 1871, to Dec. 24, 1873, transferred from salary account.....		8,720.00

Journal	619.	Proportion charged to construction of expenses of engineer's office.....		5,000.00
Ledger	B. 40.	Telegraph account.....		10,258.16
Journal	404.	Proportion of general management account, transferred to construction account		10,485.12
				550,201.97

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		Brought forward		$550,201.97
Ledger	A. 246.	Cost of extension "A".....		122,777.58
"	" 251.	" " " "B".....		15,924.56
"	B. 26.	" " Las Garzas waste ditch.....		1,800.00
"	" 25.	" " parallel No. 1		9,852.27
"	" 38.	" " " " 2		26,053.34
"	" 35.	" " " " 3		11,220.96
		Cost of enlarging parallel No. 1, as per secretary's report of receipts and disbursements for year ending Nov. 25, 1885, and president's and superintendent's reports of December, 1885		13,525.58
		Cost of enlarging main canal as per above reports		15,816.76
Ledger	A. 291.	Balance of Wauchope ditcher and		
"	B. 79.	grader account, which should have been charged to construction.....		6,505.04
Ledger	B. 15.	Cost of barn at dam.....		245.60
"	" "	" " Firebaugh stop & waste gate	1,480.74	
			440.63	
				1,921.37
"	" "	" " enlargement of 1889, '90		20,527.48
"	" "	" " fences	86.85	
			161.72	
				248.57
"	" "	" " new structures.....		1,808.53
				$798,429.61

(Endorsed:) U. S. circuit court, N. dist. of Cal. The San Joaquin and Kings River Canal and Irrigation Co. *vs.* The County of Stanislaus *et al.* No. 12257. Complainant's Exhibit No. 12. E. H. H. examiner. Published and filed December 1st 1899 Southard Hoffman, clerk.

1130 In the Circuit Court of the United States in and for the Ninth Circuit and Northern District of California.

THE SAN JOAQUIN AND KINGS RIVER CANAL AND Irrigation Company, Complainant,
vs.
THE COUNTY OF STANISLAUS, IN THE STATE OF CALIfornia; The Board of Supervisors of said County of Stanislaus, *et al.*, Defendants. } No. 12257.

Consent to Substitution of R. Y. Hayne as Solicitor for Defendants.

The undersigned consents that Robert Y. Hayne be substituted in the place and stead of the undersigned as solicitor for the defendants in the above-entitled cause.

Dated: May 22nd, 1902.

L. W. FULKERTH.

The undersigned, solicitors for the complainant hereby consent to the above substitution, and waive notice thereof, and of the order granting the same.

GARRET W. McENERNEY AND
W. B. TREADWELL,
Solicitors for Complainant.

(Endorsed:) Filed May 27, 1902, Southard Hoffman, clerk, by W. B. Beaizley, deputy clerk.

1131 At a stated term, to wit: the March term, A. D. 1902, of the circuit court of the United States of America, of the ninth judicial circuit, in and for the northern district of California held at the court-room in the city and county of San Franciso, on Thursday the 29th day of May in the year of our Lord one thousand nine hundred and two.

Present: The Honorable William W. Morrow, circuit judge.

THE SAN JOAQUIN AND KINGS RIVER CANAL AND Irrigation Co.
vs.
THE COUNTY OF STANISLAUS, IN THE STATE OF CALIfornia, *et al.* } No. 12257.

Order Substituting Solicitor for Defendants.

Upon reading and filing of the written consent of L. W. Fulkerth, Esq., to the substitution of Robert Y. Hayne Esq., as solicitor for the defendants in the place and stead of said Fulkerth, and the written consent of the solicitors for the complainant to said substitution and their waiver of notice thereof, it is ordered that said Robert Y. Hayne be and he is hereby substituted as solicitor for the defendants in the above-entitled cause in the place and stead of said L. W. Fulkerth.

1132 In the Circuit Court of the United States for the Ninth Circuit and Northern District of California.

THE SAN JOAQUIN AND KINGS RIVER CANAL AND IRRIGATION COMPANY, Complainant,
vs.
THE COUNTY OF STANISLAUS, IN THE STATE OF CALIFORNIA; The Board of Supervisors of said County of Stanislaus, and George W. Toombs, Charles H. Osler, James Alfred Davis, Thomas J. Carmichael, and Joseph P. Barnes, Defendants. } No. 12257.

Petition for Allowance of Appeal to the Supreme Court of the United States.

To the Hon. Wm. W. Morrow, judge of the circuit court for the ninth circuit and northern district of California:

The petition of The County of Stanislaus, in the State of California, The Board of Supervisors of said County of Stanislaus, and George W. Toombs, Charles H. Osler, James Alfred Davis, Thomas J. Carmichael, and Joseph P. Barnes, the defendants in the above-entitled cause respectfully shows:

That the San Joaquin and Kings River Canal and Irrigation Company filed in this court its original bill in equity on the 29th day of September A. D. 1896; that in and by said bill it was alleged that said complainant was a corporation incorporated under the laws of the State of California, and particularly under the act of the legislature of said State of May 14th 1862, and was the owner and
1133 in possession of certain water rights, canals, and irrigation works of great value, to wit over the value of five thousand dollars, situated in the counties of Stanislaus, Fresno and Merced, in the State of California, and engaged in the business of supplying and distributing water to its consumers and customers for compensation; that the defendant, The County of Stanislaus was one of the political subdivisions of the State, and that the board of supervisors thereof was the governing or legislative body of said county, and that the individual defendants were members of and constituted said board; that a petition for the fixing of water rates was filed with said board as specified in the act of the legislature of the State of California of March 12th 1885, under which the said board purported to act, and that on or about the 24th of June 1896, said petition came on to be heard, and that said board fixed a schedule of rates for water, which rates if valid, would be applicable to the business carried on by the complainant in said Stanislaus county. And said bill of complaint further alleged that said rates were of such a character as would deprive said complainant of its property without just compensation and without due process of law, and would deny to it the equal protection of the laws; and said bill prayed for process and relief against said defendants, as the whole will more fully appear from said original bill to which reference is hereby made,

which petitioners pray may be made and taken as a part of this petition.

And these petitioners further show that thereafter the said complainant by leave of court first had and obtained filed an amendment to said bill, in and by which amendment it was alleged
1134 that in and by the act of the legislature under which it was incorporated, to wit the act of May 14th 1862, it was provided that corporations organized under it should be entitled to establish and collect certain water rates, which should be subject to regulation by the board of supervisors, but which should not be reduced "so low as to yield to the stockholders less than one and a half per cent. per month upon the capital actually invested;" that the amount actually invested by the complainant under the authority of said act, prior to March 1st 1885, was $971,113.13 in money, and that said provisions of said last-mentioned act constituted a contract between the State and said corporation, and that if said act of March 12th 1885 should be construed as repealing, altering or amending said provisions of said act under which complainant was incorporated, it would be in violation of the provisions of section 10 of article one of the Constitution of the United States forbidding the impairment of the obligation of contracts, as the whole will more fully appear from said amendment to which reference is hereby made, and which petitioners pray may be made and taken as part hereof.

And these petitioners further show that process upon said original bill was served upon the defendants in the cause, and said defendants appeared in said cause, and on or about January 2nd 1897 demurred to said bill for want of jurisdiction and want of equity; but said demurrer was overruled by the Hon. Wm. W. Morrow, circuit judge, who sustained the jurisdiction of the court on the ground that the bill raised questions under the Constitution of the United States, as the whole will more fully appear from the opinion of said circuit judge, which is reported in volume 90 of the
1135 Federal Reporter at page 516 and following, to which opinion reference is hereby made, and which petitioners pray may be made and taken as part hereof.

And these petitioners further show that thereafter the defendants led their answer to said bill and to said amendment denying and controverting the material portions thereof, to which answer reference is hereby made, and which petitioner- pray may be made and taken as part hereof; that thereafter evidence was taken in said cause and the same was argued and submitted to the said circuit court for decision; and that on or about the 6th day of January 1902 the said circuit court rendered its written opinion in favor of the complainant and against the defendants; and that on the 8th day of January 1902 the said circuit court made and entered its decree in said cause in pursuance of said opinion; that in and by said opinion and decree the said circuit court sustained the claims of the complainant and held the said ordinance or order of said board of supervisiors, and the water rates fixed thereby, deprived the complainant of its property without just compensation and with-

out due process of law, and denied to it the equal protection of the laws, and held further that said act of May 14th 1862 constituted a contract between the State and the complainant, and that if said act of March 12th 1885, should be construed as repealing, altering or amending said act of May 14th 1862, as to the amount of water rates, said act of March 12th 1885 would be in violation of said provision of the Constitution of the United States forbidding the impairment of the obligation of contracts, as the whole will more fully appear from said opinion and decree, to each of which reference is
1136 hereby made, and which petitioners pray may be made a part of this petition.

That throughout all the proceedings the defendants controverted the said positions of the complainant, and claimed and claim that neither the said ordinance or order of said board of supervisors, nor the water rates established thereby operated or operate to deprive the complainant of its property without due process of law or without just compensation, and that said rates were valid rates, and that the said act of March 12th 1885, repealed and superseded the said act of May 14th 1862, so far as the fixing of water rates was concerned, and that such effect and construction of said act of 1885 did not made it in violation of the provision of the Constitution of the United States, or of any provision thereof;

Wherefore, your petitioners pray your honor to allow them an appeal to the Supreme Court of the United States from the decree in said cause entered therein on the 8th day of January 1902 and from the whole thereof.

C. A. STONESIFER,
ROBERT Y. HAYNE,
Solicitors for Defendants.

(Endorsed:) Filed May 27, 1902, Southard Hoffman, clerk, by W. B. Beaizley, deputy clerk.

1137 In the Circuit Court of the United States for the Ninth Circuit and Northern District of California.

THE COUNTY OF STANISLAUS, IN THE STATE OF CALIFORNIA; THE Board of Supervisors of the said County of Stanislaus, and George W. Toombs, Charles H. Osler, James Alfred Davis, Thomas J. Carmichael, and Joseph P. Barnes, Appellants,
vs.
THE SAN JOAQUIN AND KINGS RIVER CANAL AND IRRIGATION Company, Appellee.

Assignments of Error.

The County of Stanislaus, in the State of California, The Board of Supervisors of the said County of Stanislaus, and George W. Toombs, Charles H. Osler, James Alfred Davis, Thomas J. Carmichael and Joseph P. Barnes, the defendants in a suit in equity in the above-entitled court, wherein The San Joaquin and Kings River Canal and

Irrigation Company is complainant, and wherein a decree was entered by said court, on the 8th day of January 1902 in favor of said complainant and against said defendants, being about to petition and apply to the said circuit court for an order allowing them to appeal to the Supreme Court of the United States, from the said decree and from the whole thereof, present to said circuit court in connection with said petition and application, the following assignments of error on said appeal,

1138 And these petitioners and appellants, defendants in said cause as aforesaid respectfully submit that said circuit court erred in its decision and decree in said cause in the following particulars and for the following reasons, viz:

(1.) Because the circuit court did not determine whether the water rates established by the board of supervisors of Stanislaus county, and complained of in said suit, were valid or invalid in themselves, but set aside said water rates and enjoined their enforcement because the court held that they were reached by what was considered to be an erroneous method or process. The court ought to have held that if the result reached by the board was right it was immaterial whether or not such result was reached by an erroneous method or process; and upon the evidence in the case the court ought to have held that said water rates were valid.

(2.) Because the circuit court held that upon the evidence before it it could ascertain or determine what was the method or process by which said board of supervisors arrived at its result,—there being nothing in the evidence to indicate what method or process was resorted to by said board of supervisors in the premises.

(3.) Because the circuit court held that the method or process by which said board of supervisors arrived at said water rates was erroneous.

(4.) Because the circuit court held that the power reserved by the State of California, by its constitution in force at the time the complainant's charter was obtained, to alter, amend or repeal the charters of corporations created under its laws, did not warrant or

1139 authorize the establishment of the particular rates complained of in this suit. The court ought to have held upon the record before it that under said reserved power the State had the power and right to establish the particular rates complained of, either by an act of the legislature, or through the agency of a board of supervisors acting under the authority of an act of the legislature, without reference to any question as to whether such rates would return a sufficient income to the complainant or to its sh-reholders; and ought to have held that such exercise of said reserved power was not in violation of the provision of the Constitution of the United States forbidding the impairment of the obligation of contracts.

(5.) Because the circuit court held that the power reserved by the State, by its constitution in force at the time the complainant's charter was obtained, to alter, amend, or repeal the charter of corporations created under its laws, did not warrant or authorize the passage of the act of March 12th 1885 under which the board of

supervisors of Stanislaus county acted in fixing the water rates complained of in this suit, if said act of 1885 should be construed to be inconsistent with the provisions of the act of May 14th 1862, (under which the complainant was incorporated) relating to the amount and basis of water rates.

(6.) Because the circuit court held that if said act of March 12th 1885 should be construed as intended to repeal or supersede the provisions of said act of May 14th 1864, relating to the amount and basis of water rates, said act of 1885 would be in violation of the provision of the Constitution of the United States, forbidding the impairment of the obligation of contracts.

1140 (7.) Because the circuit court held that the provisions in relation to the amount and basis of water rates, contained in said act of May 14th 1862, under which the complainant was incorporated, were not repealed or superseded by said act of March 12th 1885, under which said board of supervisors acted in fixing said water rates which are complained of in this suit. The court ought to have held that said act of 1885 repealed and superseded the said act of 1862, so far as the establishment of water rates is concerned.

(8.) Because the circuit court held that "the value of complainant's property made by the board of supervisors and the water rates fixed by the board with respect to such estimate did deprive the complainant of property without due process of law, and denied to it the equal protection of the laws."

(9.) Because the circuit court decreed that the order or ordinance of said board of supervisors complained of in this suit "deprived the complainant herein of its property without just compensation," and without due process of law.

(10.) Because the circuit court held that the water rates established by said order or ordinance of said board of supervisors deprived the complainant of its property without just compensation and without due process of law.

(11.) Because the circuit court held that the amount invested by the complainant, or by its predecessor in interest, or by both, should have been made a controlling element in the fixing of the water rates.

1141 (12.) Because the circuit court, in determining the question whether the complainant was deprived of its property without due process of law, or was denied the equal protection of the laws, or was deprived of its property without just compensation, did not make the market value of complainant's property the controlling or principal element. In determining said questions the court should have made the market value of said property, in its then condition the principal or controlling element, and should not have regarded the amount invested by the complainant or by its predecessor, except in so far as the amount invested may have been evidence tending to show said market value.

(13.) Because there was no evidence before the circuit court showing that the value of the complainant's property was not as estimated by the said board of supervisors; and because upon the evidence before it the court ought to have held that the rates fixed

by said board would allow a sufficient return to the complainant upon the value of its property, and that such rates could not be set aside or interfered with by the courts.

(14.) Because there was no evidence before the court showing that the complainant was deprived of its property without just compensation, or without due process of law, or that it was denied the equal protection of the laws.

(15.) Because the evidence before the court showed that the water rates complained of in this suit were reasonable, fair and lawful rates.

(16.) Because the circuit court determined the question of the invalidity of the water rates complained of in the suit upon the hypothesis that the other counties through which the complainant's system extended might or would or ought to establish sim-
1142 ilar or proportionate rates to those established in Stanislaus county, and without reference to the returns actually received from said counties other than Stanislaus. The court ought to have held that the rates complained of were valid if the complainant's whole system yielded a sufficient return upon the value of its property, even though the rates upon the portion of the system which is in Stanislaus county may have been insufficient; and it ought not to have made a decree against the appellants in the absence of a showing as to the returns from the whole system, or in the absence of a showing of the value of the complainant's property in Stanislaus county, as distinguished from the value of its property in said other counties.

(17.) Because there was no satisfactory or sufficient evidence showing the portion or proportion of the complainant's return which came or which should properly come from Stanislaus county and the portion or proportions which came or which shonld properly come from the other counties through which the complainant's system extended, and no sufficient or satisfactory evidence showing the value of the portion or proportion of the complainant's property in Stanislaus county as distinguished from the value of its property in said other counties.

(18.) Because the circuit court ignored the fact shown by the evidence that large quantities of the complainant's water were supplied free of charge to the lands of Henry Miller or Miller & Lux who owned and own the majority of the stock of the complainant corporation, and by means of such ownership controlled and con-
trol the action of the complainant; the result of which
1143 feature is that the effect of the court's decision is that the water rates should be established so as to give a reasonable return to the complainant and its stockholders, and a large quantity of free water to said Henry Miller and said Miller & Lux.

(19.) Because the circuit court ignored the fact shown by the record that during the taking of the evidence in the cause the complainant's solicitor repeatedly instructed witnesses for the complainant not to answer certain important and material questions propounded for the defendants, and that such witnesses, in obedience to

such instructions, refused to answer, and did not answer such questions.

(20.) Because the circuit court ignored the fact, shown by the record, that the evidence produced on the hearing before the board of supervisors, (at which hearing the complainant was represented and in which it participated) justified, warranted and authorized the said rates fixed by said board and complained of in this suit. The court ought to have held that the action of said board which was in accordance with and required by said evidence before it, was proper; and the court ought not to have annulled and set aside the said action of said board because it considered that evidence which was not before said board required a different conclusion.

(21.) Because the circuit court held that the said ordinance or order of said board of supervisors fixing and establishing water rates, and the said water rates fixed and established by said ordinance or order, were null and void. The court ought to have held, upon the evidence before it, that said water rates and said ordinance or order *was* valid and binding.

1144 The appellants assign the foregoing as matters in which the circut court erred, and concerning which they request the attention of the Supreme Court of the United States.

Respectfully,

C. A. STONESIFER,
ROBERT Y. HAYNE,
Solicitors for Appellants.

(Endorsed:) Filed May 27th 1902, Southard Hoffman, clerk, by W. B. Beaizley, deputy clerk.

1145 In the Circuit Court of the United States for the Ninth Circuit and Northern District of California.

THE COUNTY OF STANISLAUS ET AL., Appellants,
vs.
THE SAN JOAQUIN AND KINGS RIVER *and* CANAL AND Irrigation Company, Appellee.
} No. 12257.

Stipulation Waiving Bond on Appeal.

The County of Stanislaus, in the State of California, the Board of Supervisors of the said County of Stanislaus, and George W. Toombs, Charles H. Osler, James Alfred Davis, Thomas J. Carmichael and Joseph P. Barnes, being about to petition and apply to the above-entitled court for an order allowing them an appeal to the Supreme Court of the United States from a decree entered by said court on the 8th day of January 1902 in a case in equity wherein The San Joaquin and Kings River Canal and Irrigation Company is complainant, and said above-mentioned petitioners are defendants,

Now therefore the said complainant hereby waives the giving by said petitioners and appellants, or by any of them, any bond or other security upon said appeal, and that said appeal shall stand perfected

without the giving of any bond or security, and that an order dispensing with any bond or security on such appeal may be made.

GARRET W. McENERNEY AND
W. B. TREADWELL,
Solicitors for Complainant.

(Endorsed:) Filed May 27, 1902, Southard Hoffman, clerk, by W. B. Beaizley, deputy clerk.

1146 In the Circuit Court of the United States for the Ninth Circuit and Northern District of California.

THE COUNTY OF STANISLAUS, IN THE STATE OF CALIFORNIA: The Board of Supervisors of the said County of Stanislaus, and George W. Toombs, Charles H. Osler, James Alfred Davis, Thomas J. Carmichael, and Joseph P. Barnes, Appellants,
vs.
THE SAN JOAQUIN AND KINGS RIVER CANAL AND IRRIGATION COMPANY, Appellee.
} No. 12257.

Order Allowing Appeal to the Supreme Court of the United States.

The San Joaquin and Kings River Canal and Irrigation Company having brought its bill of complaint against The County of Stanislaus, in the State of California, The Board of Supervisors of said County, and George W. Toombs, Charles H. Osler, James Alfred Davis, Thomas J. Carmichael, and Joseph P. Barnes, as defendants to said bill, and issue having been joined upon said bill, and evidence thereon having been taken, and the cause having been heard and submitted for decision, and the court having on the 8th day of January 1902 entered its decree in said cause in favor of said complainant and against said defendants to said bill; and all of said defendants to said bill having this day filed and presented to this court a petition in writing praying for the allowance to said defendants of an appeal from said decree and from the whole thereof to the Supreme Court of the United States, and having presented with said petition their written assignments of error upon said appeal; and it appearing to the court that the case is a proper one for an appeal to said Supreme Court of the United States,

1147 Now therefore upon motion in open court by the solicitor for said petitioners, defendants as aforesaid, it is ordered and decreed that said petition of said defendants, The County of Stanislaus in the State of California, The Board of Supervisors of the said County of Stanislaus, George W. Toombs, Charles H. Osler, James Alfred Davis, Thomas J. Carmichael and Joseph P. Barnes, be and the same is hereby granted, and that an appeal from said decree against said defendants, and from the whole of said decree be and the same is hereby allowed; and the said assignments of error are hereby directed to be filed as the appellants' assignments of error on said appeal.

And the solicitors of the said complainant The San Joaquin and Kings River Canal and Irrigation Company, having by a written stipulation filed in the cause and presented to the court waived the giving by said appellants or by any of them of any security or bond upon said appeal, it is ordered and decreed that the giving of any bond or security on said appeal by the said appellants or by any of them be and the same is hereby dispensed with, and that said appeal stand perfected without any bond or security.

And it is further ordered that said appeal be returnable and a citation issued and served as required by law and the practice in that regard, and that the clerk of this court make return of the record to the Supreme Court of the United States in due course, and according to the practice of the court.

Done in open court this 27th day of May 1902.

WM. W. MORROW,
Circuit Judge.

(Endorsed:) Filed May 27, 1902, Southard Hoffman, clerk, by W. B. Beaizley, deputy clerk.

1148 In the Circuit Court of the United States for the Ninth Circuit and Northern District of California.

THE COUNTY OF STANISLAUS, IN THE STATE OF CALIFORNIA; THE Board of Supervisors of the said County of Stanislaus, and George W. Toombs, Charles H. Osler, James Alfred Davis, Thomas J. Carmichael, and Joseph P. Barnes, Appellants,
vs.
THE SAN JOAQUIN AND KINGS RIVER CANAL AND IRRIGATION Company, Appellee.

Admission of Service of Appellees of Petition, Order, Assignment of Errors, & Citation.

The San Joaquin and Kings River Canal and Irrigation Company hereby acknowledge service of appellants' petition for appeal to the Supreme Court of the United States, and of the order of the circuit court for the ninth circuit and northern district of California, granting said petition and allowing said appeal, and of the appellants' assignments of error on said appeal, and of the citation issued upon said appeal, all on this 27th day of May, A. D. 1902.

GARRET W. McENERNEY AND
W. B. TREADWELL,
Solicitors for the San Joaquin and Kings River Canal and Irrigation Company.

(Endorsed:) Filed May 27, 1902. Southard Hoffman, clerk, by W. B. Beaizley, deputy clerk.

1149 In the Circuit Court of the United States for the Ninth Circuit and Northern District of California.

THE COUNTY OF STANISLAUS ET AL., Appellants,
vs.
THE KINGS RIVER CANAL AND IRRIGATION COMPANY, Appellee.
No. 12257.

Stipulation as to Preparing Transcript.

It is hereby stipulated and agreed as follows:

In making up the transcript of the record upon the appeal to the Supreme Court of the United States allowed by the circuit court on the 27th day of May A. D. 1902, the clerk of the circuit court may omit from the transcript of the record to be prepared and returned by him to the said Supreme Court the following matters, viz:

(1.) The complainant's books of account—it being stipulated for the purposes of said appeal, that the tabulations made up from said books, and introduced as exhibits in the cause, correctly represent the contents of said books.

(2.) Whenever documents introduced in evidence were filed as exhibits in the cause and were also copied in full in the evidence it shall be sufficient if such documents are copied into the transcript of the record once, and it shall not be necessary to duplicate them by putting into the transcript of the record copies of the exhibits themselves as well as copies of the copies written into the evidence.

(3.) The volumes marked Exhibits G–1 and G–2, containing the proceedings before the board of supervisors mentioned in the
1150 pleadings herein, may be omitted from the said transcript of the record; it being stipulated with regard thereto that the same show that the testimony of the witness Goodwin contained in the record herein, with the exhibits relating thereto, were given in evidence by the petitioners before said board on said hearing, and that at said hearing before said board the complainant gave evidence before said board tending to show the matters tabulated in Complainant's Exhibit 2 as modified by Exhibit 12 in this cause.

(4.) The printed transcript from the supreme court of California in the case of Wm. Lowry *vs.* The San Joaquin and Kings River Canal and Irrigation Company being sufficiently explained by the oral testimony in the cause need not be put in the transcript.

C. A. STONESIFER,
ROBERT Y. HAYNE,
Solicitors for Appellants.
GARRET W. McENERNEY AND
W. B. TREADWELL,
Solicitors for Appellee.

Order.

Upon reading and filing the foregoing stipulation the provisions thereof are approved, and the clerk of this court is hereby directed to make up the record on appeal in accordance therewith.

It is further ordered that the map (Exhibit No. 26) need not be copied by the clerk, but that the original thereof be sent to the Supreme Court at Washington as part of the record on the appeal.
Dated May 28, 1902.

WM. W. MORROW,
Circuit Judge.

(Endorsed:) Filed May 28, 1902. Southard Hoffman, clerk, by W. B. Beaizley, deputy clerk.

1151 In the Circuit Court of the United States for the Ninth Circuit and Northern District of California.

THE COUNTY OF STANISLAUS, ETC., ET AL., Appellants,
vs.
THE SAN JOAQUIN AND KINGS RIVER CANAL AND Irrigation Company, Appellee. } No. 12257.

Additional Assignments of Error.

Now come the appellants, before the record on the appeal has been made up by the clerk of the circuit court or sent to the Supreme Court of the United States and makes these additional assignments of error, viz:

That the said decree appealed from is erroneous and should be reversed for the following reasons, viz:

a. Because the judgment of the board of supervisors of the county of Stanislaus, as to the value of the complainant's property, made after hearing the complainant in this suit, is in the absence of fraud on the part of said board binding and conclusive; and there is no showing in this case of any fraud on the part of said board.

b. Because the rates fixed by the said board of supervisors, after hearing the complainant in this suit, *is* in the absence of fraud on the part of said board binding and conclusive, and there is no showing in this case of any fraud on the part of said board.

C. A. STONESIFER,
ROBERT Y. HAYNE,
Solicitors for Appellants.

(Endorsed:) Filed June 5, 1902, Southard Hoffman, clerk. Received copy of the within additional assignments of error on
1152 this 5th day of June A. D. 1902. Garret W. McEnerney & W. B. Treadwell solicitors for appellee.

1153 In the Circuit Court of the United States for the Ninth Circuit and Northern District of California.

THE COUNTY OF STANISLAUS, IN THE STATE OF CALIFORNIA; THE Board of Supervisors of the said County of Stanislaus, and George W. Toombs, Charles H. Osler, James Alfred Davis, Thomas J. Carmichael, and Joseph P. Barnes, Appellants,
vs.
THE SAN JOAQUIN AND KINGS RIVER CANAL AND IRRIGATION Company, Appellee.

Stipulation as to Evidence Omitted from Record.

It is hereby stipulated between the parties to the appeal that there was evidence tending to show that the books of the complainant introduced in evidence in the circuit court and omitted from the record by consent of the parties to the appeal, were correctly kept; and it is further stipulated that the times of completion of complainant's original canal and the various extensions thereof and betterments thereto were as shown by Exhibit Twelve as far as the same are shown thereby.

It is further stipulated that the evidence omitted from the transcript of the record for the sake of brevity showed that the order of the board of supervisors of Stanislaus county, in relation to the rates complained of in the bill of complaint herein was and is in words and figures as follows:

1154 "In the matter of the petition of C. C. Eastin *et als.* to regu-
"late the water rates of the San Joaquin and Kings River
"Canal and Irrigation Company.

"At 1 p. m. the board adopted the following order in the said mat-
" ter, to wit:

" Order of the board of supervisors of Stanislaus county fixing and
" establishing water rates of the San Joaquin and Kings River
" Canal and Irrigation Company.

" Pursuant to an act of the legislature of the State of California
" entitled 'An act to regulate and control the sale, rental and distri-
" 'bution of appropriated waters in the State other than in any city,
" 'city and county or town therein and to secure the rights of way
" 'for the conveyance of such water to the places of use,' approved
" March 12th, 1885, the board regularly proceeds to the hearing of
" the petition of C. C. Eastin *et als.*, presented herein praying for the
" regulation of the rates and compensation to be collected by the
" San Joaquin and Kings River Canal and Irrigation Company for
" the sale, rental or distribution of its appropriated water to any of
" the inhabitants of Stanislaus county, under and pursuant to said
" act, and evidence having been introduced by and on behalf of the
" petitioners herein and by and on behalf of the said San Joaquin

"and Kings River Canal and Irrigation Company, and the same "being closed and the matter submitted to the board for its consid- "eration and decision, and the board being fully advised in the "premises, the board does hereby estimate as near as may be the "value of the canal, ditches, flumes, water chutes and all 1155 "other property actually used and useful to the appropria- "tion of the appropriated waters of said company, belonging "to and possessed by it, at the sum of $337,000.00, and does hereby "estimate to said company its annual reasonable expenses, includ- "ing the cost of repairs, management and operating its works at the "sum of $22,000.00; and it appearing to the board that said waters "are used solely for irrigation purposes and watering stock;

"It is therefore ordered that the maximum rates and compensa- "tion at which the San Joaquin and Kings River Canal and Irriga- "tion Company may and shall sell, rent, or distribute its appropri- "ated waters to any of the inhabitants of said Stanislaus county be "and the same are hereby fixed and established at the following "sums, to wit:

"For irrigating alfalfa, all peren-ial grasses and all cereals, $1.50 "per acre per annum.

"For irrigating trees and vines $2.00 per acre per annum.

"For irrigating gardens $3.50 per acre per annum.

"For water for sheep, hogs or goats $6.00 per thousand per "month, and at the same rate per month for a less number.

"For water for cattle, horses, mules and all other live stock $25.00 "per thousand per month, and at the same rate per month for a less "number.

"It is further ordered that the clerk of this board forthwith cause "this order to be published in full in the Stanislaus County Weekly "News, a newspaper published in the county of Stanislaus, State of "California, for not less than thirty days after the first publication "thereof.

1156 "This order shall take effect immediately."

It is further stipulated that said omitted evidence showed that the sum allowed by said order for the company's annual expenses comprised and included the sum of $2,578.26 for taxes upon the company's property, the value of which was estimated in said order.

C. A. STONESIFER,
ROB'T Y. HAYNE,
Solicitors for Appellants.
W. B. TREADWELL,
Solicitor for Appellee.

The foregoing stipulation is approved and the clerk is directed to return the same to the Supreme Court with the transcript of the record on the appeal.

WM. W. MORROW,
Circuit Judge.

(Endorsed:) Filed June 24, 1902, Southard Hoffman, clerk, by W. B. Beaizley, deputy clerk.

1157 In the Circuit Court of the United States, Ninth Judicial Circuit, Northern District of California.

THE SAN JOAQUIN AND KINGS RIVER CANAL AND IRRIGATION COMPANY, a Corporation, Complainant,
vs.
THE COUNTY OF STANISLAUS, IN THE STATE OF CALIFORNIA; The Board of Supervisors of the said County of Stanislaus, and George W. Toombs, Charles H. Osler, James Alfred Davis, Thomas J. Carmichael, and Joseph P. Barnes, Defendants. } No. 12257.

Certificate to Transcript of Record on Appeal.

I, Southard Hoffman, clerk of the circuit court of the United States of America, of the ninth judicial circuit, in and for the northern district of California, do hereby certify the foregoing eleven hundred and fifty-six pages, numbered from 1 to 1156 inclusive, to be a full, true and correct copy of the record and proceedings in the above and therein entitled cause, excepting therefrom Complainant's Exhibit No. 24, and Respondents' Exhibits G 1 and G 2 (which are omitted from this transcript by stipulation of counsel and order made thereon) and also excepting Complainant's Exhibit No. 26 which original exhibit is by order of the judge transmitted herewith as part of this record.

I further certify that the original stipulation, a copy
1158 of which appears upon pages 1149 and 1150 of this record contains a correct general characterization and description of the evidence which is omitted from the transcript of the record in pursuance of said stipulation.

I further certify that the facts agreed upon in the original stipulation, a copy of which appears upon pages 1153, 1154, 1155 and 1156, of this record are shown by the evidence omitted from the transcript under the stipulation of the parties.

And I further certify that the cost of the foreg ing transcript of record on appeal is $684.80; that said sum was paid by The County of Stanislaus, one of the defendants; that the original citation issued herein is hereto annexed, and that this transcript with said original citation and original Exhibit No. 26, annexed, constitutes the record upon the appeal of the defendants herein, to the Supreme Court of the United States.

In testimony whereof, I have hereunto set my hand and affixed the seal of said circuit court this 24th day of June A. D. 1902.

Seal U. S. Circuit Court, Northern Dist. Cal.

SOUTHARD HOFFMAN,
Clerk of United States Circuit Court, Ninth Judicial Circuit, Northern District of California.

1159 In the Circuit Court of the United States for the Ninth Circuit and Northern District of California.

THE COUNTY OF STANISLAUS, IN THE STATE OF CALIFORNIA; The Board of Supervisors of the said County of Stanislaus, and George W. Toombs, Charles H. Osler, James Alfred Davis, Thomas J. Carmichael, and Joseph P. Barnes, Appellants,
vs.
THE SAN JOAQUIN AND KINGS RIVER CANAL AND IRRIGATION Company, Appellee. } No. 12257.

The San Joaquin and Kings River Canal and Irrigation Company having brought its bill of complaint against The County of Stanislaus, in the State of California. The Board of Supervisors of said County, and George W. Toombs, Charles H. Osler, James Alfred Davis, Thomas J. Carmichael, and Joseph P. Barnes, as defendants to said bill, and issue having been joined upon said bill, and evidence thereon having been taken, and the cause having been heard and submitted for decision, and the court having on the 8th day of January 1902 entered its decree in said cause in favor of said complainant and against said defendants to said bill; and all of said defendants to said bill having this day filed and presented to this court a petition in writing praying for the allowance to said defendants of an appeal from said decree and from the whole thereof to the Supreme Court of the United States, and having pre-
1160 sented with said petition their written assignments of error upon said appeal; and it appearing to the court that the case is a proper one for an appeal to said Supreme Court of the United States,

Now therefore upon motion in open court by the solicitor for said petitioners, defendants as aforesaid, it is ordered and decreed that said petition of said defendants, The County of Stanislaus in the State of California, The Board of Supervisors of the said County of Stanislaus, George W. Toombs, Charles H. Osler, James Alfred Davis, Thomas J. Carmichael and Joseph P. Barnes, be and the same is hereby granted, and that an appeal from said decree against said defendants, and from the whole of said decree be and the same is hereby allowed; and the said assignments of error are hereby directed to be filed as the appellants' assignments of error on said appeal.

And the solicitors of the said complainant The San Joaquin and Kings River Canal and Irrigation Company, having by a written stipulation filed in the cause and presented to the court waived the giving by said appellants or by any of them of any security or bond upon said appeal, it is ordered and decreed that the giving of any bond or security on said appeal by the said appellants or by any of them be and the same is hereby dispensed with, and that said appeal stand perfected without any bond or security.

And it is further ordered that said appeal be returnable and a citation issued and served as required by law and the practice in

FOLDOUT(S) IS/ARE TOO LARGE TO BE FILMED

that regard, and that the clerk of this court make return of the record to the Supreme Court of the United States in due course, and according to the practice of the court.

Done in open court this 27th day of May 1902.

(Signed) WM. W. MORROW,
Circuit Judge.

1161 UNITED STATES OF AMERICA, *ss:*

To The San Joaquin and Kings River Canal and Irrigation Company (a corporation), Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, at the city of Washington, in the District of Columbia, on the 25th day of July A. D. 1902 pursuant to an order of the circuit court of the United States for the ninth circuit and northern district of California allowing an appeal to the defendants in a certain suit in equity in said circuit court wherein you, the said San Joaquin and Kings River Canal and Irrigation Company, are the complainant, and The County of Stanislaus, in the State of California, The Board of Supervisors of the said County of Stanislaus, and George W. Toombs, Charles H. Osler, James Alfred Davis, Thomas J. Carmichael and Joseph P. Barnes are the defendants, and wherein a decree was entered by the said circuit court in favor of you the said complainant and against said defendants, on the 8th day of January A. D. 1902, which appeal is by all of said defendants and is from the whole of said decree, and is to the Supreme Court of the United States, as the whole will more fully appear from a copy of the order allowing said appeal, which is annexed hereto, and is hereby referred to and made part hereof; and you are cited and admonished to appear as aforesaid, to show cause, if any there be, why the said decree entered on January 8th 1902 as aforesaid in the said suit in equity in said circuit court mentioned, should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable William W. Morrow judge of the circuit court of the ninth circuit and northern district of California on this 27th day of May A. D. 1902, and of the Independence of the United States, the one hundred and *one hundred and* twenty-sixth.

WM. W. MORROW,
Circuit Judge.

1162 [Endorsed:] In the Supreme Court of the United States The County of Stanislaus *et als.* appellants *vs.* The San Joaquin and Kings River Canal and Irrigation Company appellee. Citation. Filed May 27th 1902 Southard Hoffman clerk U. S. circuit court, northern district of California. By W. B. Beaizley deputy clerk.

(Here follows map marked p. 1163.)

[The foregoing map is endorsed as follows:] U. S. circuit court, N. dist. of Cal. The San Joaquin and Kings River Canal and Irrigation Co. *vs.* The County of Stanislaus *et al.* No. 12257. Complainant's Exhibit 26. E. H. H. examiner. Published and filed December 1st, 1899, Southard Hoffman clerk.

1164 In the Supreme Court of the United States.

THE COUNTY OF STANISLAUS ET AL., Appellants,
vs.
THE SAN JOAQUIN AND KINGS RIVER CANAL AND IRRIGATION Company, Appellee.

It is hereby stipulated and agreed as follows:

The notices provided for by subdivision 9 of rule 10 are hereby waived, and the parties hereby agree upon the portions of the transcript of the record returned to this court which are to be printed by the clerk, as follows:

All of said transcript of the record shall be printed except the following portions, viz:

(1.) The memorandum of costs and disbursements and the taxation thereof, on pp. 67 to 70.

(2.) The court's opinion on the demurrer to the bill, on pp. 72 to 83.

(3.) Omit all of the evidence of David M. Rouse except questions 1, 2, 3, 4, and 5 on page 110 and the answers thereto, and questions 44, 45, 46, 47, and 48 on page 114 and the answers thereto,

(4.) Omit from the evidence of Andres Gustav Anderson, questions 15, 16, 17, 18 and 19 on page 147 with the answers thereto.

(5.) Omit all of the evidence of Horace Wanzer except questions 1, 2, 3, 4, 5, 6, 7, and 8 on page 194 (with the answers thereto) and questions 9, 10 and 11 on page 195 (with the answers thereto), and questions 25, 26, 27 and 28 on page 198 (with the answers thereto).

(6.) Omit the following, viz:

1165 All the evidence of Stangroom from and including question 1 on page 219 down to the end of his testimony on page 285.

All of the evidence of J. Q. Drummond from and including question 1 on page 286 down to the end of his testimony on page 290.

All of the evidence of C. H. Barrett from and including question 1 on page 291 down to the end of his testimony on page 293.

All the evidence of E. C. Morgan from and including question 1 on page 294 down to the end of his testimony on page 303.

All the evidence of A. H. Rose from and including question 1 on page 304 down to the end of his testimony on page 366.

(7.) Omit from the evidence of C. Z. Merritt (recalled) the following, viz: From and including question 1 on page 367 down to and including question 8 on page 368, (together with the answers to said questions); also omit from the evidence of the same witness, from and including question 60 on page 380 down to (but *not* including) question 134 on page 395.

(8.) Omit from the cross-examination, redirect examination and recross-examination of the witness C. E. Grunsky, pages 411 to 421.

(9.) Omit all of the evidence of Wm. S. Chapman, from and including question 1 on page 736 to the end of his testimony on page 769.

(10.) Omit from the evidence of C. Z. Merritt recalled the following, viz: From and including Q. 1 on page 770 down to (but *not* including Q. 26 on p. 775).

1166 (11.) Omit all of the evidence of Peter J. Giovanni from and including question 1 on page 887 down to the end of his testimony on page 895.

(12.) Omit the following exhibits, viz:

Respondents' Ex. A (report of Schussler) p. 938 to p. 943.

Respondents' Ex. B (report of Stangroom) p. 944 to p. 946.

Respondents' Ex. C (report of Stangroom with annexed statements) p. 947 to p. 959.

Complainant's Ex. 7 (report of Stangroom) p. 960 to p. 970.

Complainant's Ex. 8 (report of Stangroom) p. 971 to p. 978.

Complainant's Ex. 10 (certificate of death) p. 983 to p. 984.

Complainant's Ex. 13 (report of Wm. Center) p. 984 to p. 985.

Complainant's Ex. 14 (report of Drummond) p. 986 to p. 989.

Complainant's Ex. 15 (report of Stangroom) p. 989 to p. 998.

Complainant's Ex. 16 (report of Stangroom) p. 999 to p. 1000.

Complainant's Ex. 17 (report of Stangroom) p. 1001 to p. 1004.

Respondents' Ex. D (report of Brereton) p. 1015 to p. 1020.

Complainant's Ex. 23 (report of Mendell & Bender) p. 1021 to p. 1033.

Respondents' Ex. F (report of Brereton) p. 1042 to p. 1049.

Complainant's Ex. 1 (list of books) p. 1051 to p. 1057.

This stipulation is intended to be a substitute for the proceedings provided for by subdivision 9 of rule 10, and to have the same effect as if proceedings under said rule had been taken; and the clerk is requested to proceed accordingly.

C. A. STONESIFER,
ROB'T Y. HAYNE,
Solicitors for Appellants.
W. B. TREADWELL,
Solicitor for Appellee.

1167 [Endorsed:] No. —. In the Supreme Court of the United States. The County of Stanislaus, etc., *et al.*, appellants *vs.* The San Joaquin and Kings River Canal & Irrigation Co., appellee. Stipulation.

1168 [Endorsed:] File No. 18598. Supreme Court U. S. October term, 1902. Term No. 370. The County of Stanislaus *et al.*, app'ts *vs.* The San Joaquin & Kings River Canal & Irrigation Co. Stipulation as to parts of record to be printed. Filed July 3, 1902.

Endorsed on cover: File No. 18598. N. California C. C. U. S. Term No. 370. The County of Stanislaus, in the State of California; The Board of Supervisors of said County of Stanislaus & George W. Toombs *et al.*, appellants, *vs.* The San Joaquin and Kings River Canal and Irrigation Company. Filed July 3, 1902.

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ARGUMENT.

THERE IS NO JURISDICTION OR CASE IN EQUITY.

1. No case for relief in equity was alleged or proven against defendants, and the Circuit Court had no jurisdiction in equity on the ground of preventing a multiplicity of suits, or on any ground, because the defendants sued have no power to enforce the rate-ordinance complained of, and it is not alleged or proven that they either threaten to, or are proceeding to, or that they can enforce it. Under the rate Act of 1885, defendants can do no act towards the enforcement of the ordinance, but its enforcement depends entirely upon the will and act of the ratepayers. Defendants cannot therefore be in privity with or represent the ratepayers as to the enforcement of the ordinance, and hence defendants are improperly sued 24-38

2. The Circuit Court had no jurisdiction in equity of this case, because complainant had an adequate remedy at law, in the statutory right given it to apply to the Supervisors to have the rates fixed anew 39-42

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THERE IS NO IMPAIRMENT BY THE ACT OF 1885, OF THE OBLIGATION OF COMPLAINANT'S ALLEGED CONTRACT UNDER THE ALLEGED RATE ACT OF 1862.

1. The alleged rate act of 1862, is void because a local and special Act in violation of Section 31, Art. IV, of the Constitution of California of 1849, in that, eleven counties were excepted from the operation of the Act 42-45

2. Even if valid, the Act of 1862, was a mere regulation as to a public use and did not constitute with complainant an unalterable, or any contract, as to rates and basis of valuation, since the then State Constitution of 1849, and the State Constitution of 1879, both reserved to the State, the right to alter or repeal said Act of 1862, and the same was repealed by said Act of 1885, as to rates and basis of valuation 45-77

VALUATION OF THE IRRIGATING CANAL FOR PURPOSE OF FIXING RATES.

1. The Circuit Court erred in holding the original cost of the canal to be the chief and controlling element to be considered in valuing the canal. The cost, however, is an element to be duly considered under all the circumstances, in fixing such value. Under the Act of 1885, cost could be considered 77-93

2. The Circuit Court erred in holding that the Supervisors did not, in arriving at the value of the canal, consider its cost. On the contrary, the evidence shows that such cost must have been considered by the Supervisors 80

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3. The Supervisors' valuation of the canal at $337,000.00 was fair and reasonable 80

4. The Supervisors' estimate of $20,000.00 as the annual cost of maintaining the canal was fair and reasonable 95

5. If the the valuation of the canal arrived at was fair and reasonable, the exact process by which the Supervisors may have arrived at such valuation is immaterial, and, in the absence of fraud, is not the subject of judicial inquiry. Here no fraud was alleged or proven 84-85

6. Complainant did not produce on the trial any satisfactory or competent proof of the cost of its canal, or of the expense of maintaining it 85-95

7. The canal was constructed in an extravagant manner 89

8. The amount of money complainant's stockholders may have paid it for their stock is not satisfactory evidence of the value of the canal 90

9. Complainant lost large sums in farming operations 90

10. The canal was assessed for taxation at a valuation of $170,000.00 only 94

11. The valuation complained of was reasonable considering, under the evidence, the canal as used and useful with reference to the acreage irrigated paying therefor, since it appears that although the canal was constructed to irrigate a large body of land, yet only a small part of it is cultivated and collected from, and that of such part, only about one-fifth is in Stanislaus County, and that of the 71½ miles of the canal, only 11½ miles thereof are in that county 92-111

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THE RATES FIXED BY THE SUPERVISORS DID NOT AND DO NOT DEPRIVE COMPLAINANT OF ANY PROPERTY WITHOUT DUE PROCESS OF LAW.

1. Under the rates complained of and fixed in June, 1896, complainant's net income from the whole canal based upon rates it was entitled to collect was greater by $4,918.69 for 1897, and by $2,634.82 for 1898 than the average net annual income theretofore received by it 96

2. After the rates complained of had been fixed in June, 1896, by the Supervisors of Stanislaus County for that county only, complainant, of its own accord, reduced many of the rates that it had theretofore been charging and that it was entitled to charge and collect in the Counties of Merced and Fresno 99

3. The Circuit Court erred in holding the rates fixed by the Supervisors of Stanislaus County to be unreasonably low because of its theory that they should be considered by the Court as applying in all three counties; whereas, under the Act of 1885, they were applicable in the County of Stanislaus only, and whereas, as matter of fact, they were not applied by complainant in the said two other counties, wherein it, in fact, collected rates other than those fixed by the Supervisors of Stanislaus County for that county only. It may be said that, the whole case was decided by the Circuit Court on this erroneous theory, which was mere hypothesis, having no basis either in law or in fact 102-6

4. Even under such erroneous theory, complainant's annual net income was and is ample under the rates complained of..... 106-7

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THE RATES COMPLAINED OF WERE REASONABLE, SINCE THE EVIDENCE SHOWS THAT, THE IRRIGATORS IN STANISLAUS COUNTY BEING AT THE LOWER END OF THE CANAL RECEIVED VERY POOR SERVICE..... 108-11

THE RATES COMPLAINED OF WERE REASONABLE CONSIDERING, UNDER THE EVIDENCE, THE CANAL AS USED AND USEFUL WITH REFERENCE TO THE ACREAGE IRRIGATED AND PAYING THEREFOR, SINCE IT APPEARS THAT, ALTHOUGH THE CANAL WAS CONSTRUCTED TO IRRIGATE A LARGE BODY OF LAND, YET ONLY A SMALL PART OF IT IS CULTIVATED AND COLLECTED FROM, AND THAT OF SUCH PART, ONLY ABOUT ONE-FIFTH IS IN STANISLAUS COUNTY, AND THAT OF THE 71½ MILES OF THE CANAL, ONLY 11½ MILES THEREOF ARE IN THAT COUNTY 92

IF THE OPERATION OF THE RATES COMPLAINED OF BE CONSIDERED WITH REFERENCE TO THE VALUE OF THE CANAL USED AND USEFUL IN STANISLAUS COUNTY ONLY, COMPLAINANT, UNDER SUCH RATES, RECEIVED AN AMPLE NET ANNUAL INCOME IN THAT COUNTY.. 111

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DISCRIMINATION IN RATES AND FREE WATER BY COMPLAINANT IN FAVOR OF AND TO MILLER & LUX, WHO OWN A MAJORITY OF COMPLAINANT'S STOCK AND CONTROL ITS BOARD OF DIRECTORS. Page.

1. Because of such discrimination in irrigating the cultivated lands of Miller & Lux, complainant fails to collect from them at least $8,000.00 annually 120-9

2. Because of such discrimination in irrigating with so-called "waste water" the uncultivated lands of Miller & Lux used for pasturing their thousands of cattle, complainant fails to collect from them at least $60,000.00 annually 129-147

COMPLAINANT, BEING GUILTY, AS THE EVIDENCE CLEARLY SHOWS, OF AFORESAID GROSS DISCRIMINATIONS IN FAVOR OF ITS CONTROLLING STOCKHOLDER, AND WHICH OPERATE MOST INEQUITABLY AGAINST THE OTHER IRRIGATORS, WILL NOT BE HEARD IN A COURT OF EQUITY TO COMPLAIN OF THE PUBLIC RATES FIXED BY THE SUPERVISORS, WHEN IT MANIFESTLY APPEARS THAT SUCH PUBLIC RATES COULD BE REASONABLY FIXED STILL LOWER, IF SUCH DISCRIMINATIONS WERE NOT PRACTISED BY COMPLAINANT. HE WHO ASKS EQUITY MUST DO EQUITY, AND HE MUST COME INTO A COURT OF EQUITY WITH CLEAN HANDS 127-141-7

No. 80.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1903.

THE COUNTY OF STANISLAUS, IN THE STATE OF CALIFORNIA; THE BOARD OF SUPERVISORS OF SAID COUNTY OF STANISLAUS, GEORGE W. TOOMBS, ET AL.,
Appellants,

vs.

THE SAN JOAQUIN AND KINGS RIVER CANAL AND IRRIGATION COMPANY,
Appellee.

BRIEF ON BEHALF OF APPELLANTS.

STATEMENT OF FACTS.

This is a suit in Equity brought by the San Joaquin and Kings River Canal and Irrigation Company, a

corporation, against the County of Stanislaus, in the State of California, the Board of Supervisors of said County of Stanislaus, and George W. Toombs and the other members of said Board of Supervisors in their official capacities. The purpose of the suit and the prayer of the bill of complaint filed September 29th, 1896, was to have the Circuit Court adjudge to be void and to enjoin the enforcement by defendants of an ordinance or order adopted by said Board of Supervisors on the 26th day of June, 1896, fixing the water rates to be charged by complainant Irrigation Company in Stanislaus County, and for complainant's costs.

The case was tried, and the Circuit Court on the 8th day of January, 1902, made and entered its judgment and decree, granting the relief prayed for, and for $1870.30 costs, and defendants, on the 27th day of May, 1902, took and now prosecute their appeal from said judgment and decree.

Complainant alleges in its bill of complaint that, it was incorporated in 1871, under the Act of April 14, 1853 (Cal. Stats. 1853, p. 87), as amended by the Act of March 14th, 1862 (Cal. Stats. 1862, p. 540) appears that complainant bought out the San Joaquin and Kings River Canal Company (complainant's corporate name is the same with the word "Irrigation" added), (Rec. 55), and that complainant's irrigating canal takes by appropriation its water from the San Joaquin river, at Fresno slough, and carries

it from that point through the counties of Fresno, Merced and Stanislaus a distance of about seventy-one miles; but within that distance, there are, including parallels, about ninety-eight miles of canal, and including smaller laterals, the entire system is about 120 miles (Rec. 71, 187). The canal runs for eleven seven-tenths miles into Stanislaus County where it ends. (*There is a map of the canal at the end of the printed record.*)

In fixing the water rates in June, 1896, the Board of Supervisors proceeded under the authority of the Act of March 12th, 1885. (Cal. Stats. 1885, p. 95) upon the petition of twenty-five inhabitants and taxpayers of the County. The Board's determination of the matter was made at a hearing before it, of which hearing notice had been given, and at which hearing both said petitioners and complainant were present and introduced evidence.

The most material rates in controversy are those as to alfalfa and cereals. Complainant alleges that its regular rates, prior to the action of the Supervisors, were $2.50 per acre per annum for alfalfa and $2.00 per acre per annum for cereals. In each instance the Supervisors reduced the rates to $1.50 per acre per annum in Stanislaus County. The Board of Supervisors of Stanislaus having no jurisdiction as to rates in Fresno and Merced Counties, its rates could apply to Stanislaus County only.

Complainant also claims that, the Supervisors

should have valued its works at their original cost of $798,429.61 (Rec. 445), whereas the Supervisors valued them at $337,000. Because of these acts by the Supervisors, complainant alleges in its bill that the rates so fixed were so low as to prevent it from realizing a reasonable income on the value of its works, and that the said order fixing such rates deprived it of its property without due process of law, in violation of Section 1 of the XIV Amendment to the Constitution of the United States.

Under the Act of 1862, it was provided in Section 3 that, the County Supervisors should not fix the water rates so low as to yield to the stockholders of a water company less than eighteen per cent per year upon the capital actually invested, while under Act of 1885, it is provided in section 5 that the rates must be fixed so that they would yield per year, net receipts not less than six per cent upon the value of the works used and useful in the appropriation and furnishing of water. (*These Acts are printed in full in this brief.*)

On June 8th, 1899, nearly three years after the commencement of the suit, complainant amended its bill of complaint by alleging that it had an unalterable contract with the State of California under the Act of 1862, entitling it to not less than *eighteen per cent* net profit per year upon *the costs of its works,* and that the Act of 1885, providing for a less profit based *on the value of its works* was an impairment

by the State of said contract in violation of the provisions of Section 10 of Article I, of the Constitution of the United States (Rec. 33, 35).

At the time of the passage of the Act of 1862, the Constitution of 1849, of California, in Section 31, Article IV, reserved to the State the power to alter or repeal all laws relating to corporations. The same power was reserved to the State by Section 1 of Article XII of the Constitution of 1879.

On the trial, complainant expressly waived its allegation that its right to appropriate water had a value (Rec. 303-4). It was also alleged in the bill of complaint that, complainant would be harassed by a multiplicity of suits to require it to furnish water at the objectionable rates unless immediate relief should be granted. But it was not alleged in the bill that defendants, or any of them, were or was in any manner proceeding to or threatening to enforce the rates complained of or that they, or any of them, had any power to do so. No preliminary or provisional injunction was asked for.

Defendants demurred to the bill of complaint on the grounds, among others, that complainant had an adequate remedy at law; and that defendants had been improperly sued and that no relief could be had against them inasmuch as they had no power to enforce against complainant the rates complained of. The Circuit Court over-ruled the demurrer (Rec. 12, 15). By their answer, defendants denied all the

substantive allegations of the bill, and, in addition, averred that complainant's annual net receipts, under the rates complained of, would exceed nine per cent upon the value of its works. Also, that complainant discriminated in favor of Miller & Lux, its largest stockholder, by furnishing them water at rates less than those charged to its other consumers, and also by furnishing them water free of charge, and that complainant's revenue would be greatly increased if such discrimination was not practiced (Rec. 19, 29). Defendants also averred in their answer that, under the Constitution and laws of the State of California, they had no power to enforce the rates complained of. (Rec. 30).

As before stated, the Circuit Court gave and entered its judgment as prayed for by complainant.

ASSIGNMENTS OF ERROR.

These petitioners and appellants, defendants in said cause as aforesaid, respectfully submit that, said Circuit Court erred in its decision and decree in said cause in the following particulars for the following reasons, viz:

1. Because the Circuit Court did not determine whether the water rates established by the Board of Supervisors of Stanislaus County, and complained of in said suit, were valid or invalid in themselves, but set aside said water rates and enjoined their enforcement because the Court held that they were reached

by what was considered to be an erroneous method or process. The Court ought to have held that if the result reached by the Board was right, it was immaterial whether or not such result was reached by an erroneous method or process; and upon the evidence in the case the court ought to have held that said water rates were valid.

2. Because the Circuit Court held that, upon the evidence before it, it could ascertain or determine what was the method or process by which said Board of Supervisors arrived at its result—there being nothing in the evidence to indicate what method or process was resorted to by said Board of Supervisors in the premises.

3. Because the Circuit Court held that the method or process by which said Board of Supervisors arrived at said water rates was erroneous.

4. Because the Circuit Court held that the power reserved by the State of California, by its Constitution in force at the time the complainant's charter was obtained, to alter, amend or repeal the charters of corporations created under its laws, did not warrant or authorize the establishment of the particular rates complained of in his suit. The Court ought to have held upon the record before it that under said reserved power the State had the power and right to establish the particular rates complained of, either by an Act of the Legislature, or through the agency of a Board of Supervisors acting under the authority of an

act of the legislature, without reference to any question as to whether such rates would return a sufficient income to the complainant or to its shareholders; and ought to have held that such exercise of said reserved power was not in violation of the provision of the Constitution of the United States forbidding the impairment of the obligation of contracts.

5. Because the Circuit Court held that the power reserved by the State, by its Constitution in force at the time the complainant's charter was obtained, to alter, amend, or repeal the charters of corporations created under its laws, did not warrant or authorize the passage of the Act of March 12, 1885, under which the Board of Supervisors of Stanislaus County acted in fixing the water rates complained of in this suit, if said Act of 1885 should be construed to be inconsistent with the provisions of the Act of May 14th, 1862, (under which the complainant was incorporated) relating to the amount and basis of water rates.

6. Because the Circuit Court held that if said Act of March 12th, 1885, should be construed as intended to repeal or supersede the provisions of said Act of May 14th, 1864, relating to the amount and basis of water rates, said Act of 1885 would be in violation of the provisions of the Constitution of the United States, forbidding the impairment of the obligation of contracts.

7. Because the Circuit Court held that the pro-

visions in relation to the amount and basis of water rates, contained in said Act of May 14th, 1862, under which the complainant was incorporated, were not repealed or superseded by said Act of March 12th, 1885, under which said Board of Supervisors acted in fixing said water rates which are complained of in this suit.

The Court ought to have held that said Act of 1885 repealed and superseded the said Act of 1862, so far as the establishment of water rates is concerned.

8. Because the Circuit Court held that "the value "of complainant's property made by the Board of Su- "pervisors and the water rates fixed by the Board "with respect to such estimate did deprive the com- "plainant of property without due process of law, "and denied to it the equal protection of the laws."

9. Because the Circuit Court decreed that the order or ordinance of said Board of Supervisors complained of in this suit "deprived the complainant herein of its property without just compensation," and without due process of law.

10. Because the Circuit Court held that the water rates established by said order or ordinance of said Board of Supervisors deprived the complainant of its property without just compensation and without due process of law.

11. Because the Circuit Court held that the amount invested by the complainant, or by its predecessor in interest, or by both, should have been made a

controlling element in the fixing of the water rates.

12. Because the Circuit Court, in determining the question whether the complainant was deprived of its property without due process of law, or was denied the equal protection of the laws, or was deprived of its property without just compensation, did not make the market value of complainant's property the controlling or principal element. In determining said questions the Court should have made the market value of said property, in its then condition, the principal or controlling element, and should not have regarded the amount invested by the complainant, or by its predecessor, except in so far as the amount invested may have been evidence tending to show said market value.

13. Because there was no evidence before the Circuit Court showing that the value of the complainant's property was not as estimated by the said Board of Supervisors; and because upon the evidence before it the Court ought to have held that the rates fixed by said Board would allow a sufficient return to the complainant upon the value of its property, and that such rates could not be set aside or interferred with by the Courts.

14. Because there was no evidence before the Court showing that the complainant was deprived of its property without just compensation, or without due process of law, or that it was denied the equal protection of the laws.

15. Because the evidence before the Court showed that the water rates complained of in this suit were reasonable, fair and lawful rates.

16. Because the Circuit Court determined the question of the invalidity of the water rates complained of in this suit, upon the hypothesis that the other Counties through which the complainant's system extended might or would or ought to establish similar or proportionate rates to those established in Stanislaus County, and without reference to the returns actually received from said Counties other than Stanislaus.

The Court ought to have held that the rates complained of were valid if the complainant's whole system yielded a sufficient return upon the value of its property, even though the rates upon the portion of the system which is in Stanislaus County may have been insufficient; and it ought not to have made a decree against the appellants in the absence of a showing as to the returns from the whole system, or in the absence of a showing of the value of the complainant's property in Stanislaus County, as distinguished from the value of its property in said other Counties.

17. Because there was no satisfactory or sufficient evidence showing the portion or proportion of the complainant's return which came or which should properly come from Stanislaus County and the portion or proportions which came or which should properly come from the other Counties through

which the complainant's system extended, and no sufficient or satisfactory evidence showing the value of the portion or proportion of the complainant's property in Stanislaus County as distinguished from the value of its property in said other Counties.

18. Because the Circuit Court ignored the fact shown by the evidence that large quantities of the complainant's water was supplied free of charge to the lands of Henry Miller or Miller & Lux, who owned and own the majority of the stock of the complainant corporation, and by means of such ownership controlled and control the action of the complainant; the result of which feature is that, the effect of the Court's decision is that the water rates should be established so as to give a reasonable return to the complainant and its stockholders and a large quantity of free water to said Henry Miller and said Miller & Lux.

19. Because the Circuit Court ignored the fact shown by the record that during the taking of the evidence in the cause the complainant's solicitor repeatedly instructed witnesses for the complainant not to answer certain important and material questions propounded for the defendants, and that such witnesses, in obedience to such instructions, refused to answer, and did not answer such questions.

20. Because the Circuit Court ignored the fact, shown by the record, that the evidence produced on the hearing before the Board of Supervisors (at

which hearing the complainant was represented and in which it participated) justified, warranted and authorized the said rates fixed by said Board and complained of in this suit. The Court ought to have held that the action of said Board which was in accordance with and required by said evidence before it, was proper; and the Court ought not to have annulled and set aside the said action of said Board because it considered that evidence which was not before said Board required a different conclusion.

21. Because the Circuit Court held that the said ordinance or order of said Board of Supervisors fixing and establishing water rates, and the said water rates, fixed and established by said ordinance or order, were null and void. The Court ought to have held, upon the evidence before it, that said water rates and said ordinance or order was valid and binding.

22. Because the judgment of the Board of Supervisors of the County of Stanislaus, as to the value of complainant's property, made after hearing the complainant in this suit, is in the absence of fraud on the part of said Board binding and conclusive; and there is no showing in this case of any fraud on the part of said Board.

23. Because the rates fixed by the said Board of Supervisors, after hearing the complainant in this suit, *is* in the absence of fraud on the part of said

Board binding and conclusive, and there is no showing in this case of any fraud on the part of said Board. (Rec. 450, 458.)

ACT OF 1862.

(Cal. Stats. 1862, p. 540.)

An Act to authorize the incorporation of canal companies, and the construction of canals.

(Approved May 14, 1862.)

The people of the State of California, represented in Senate and Assembly, do enact as follows:

Section 1. Corporations may be formed, under the provisions of an Act entitled an Act to provide for the formation of corporations for certain purposes, passed April fourteenth, eighteen hundred and fifty-three, and the several Acts amendatory thereof and supplemental thereto, for the following purposes: The construction of canals, for the transportation of passengers and freights, or for the purpose of irrigation or water power, or for the conveyance of water for mining or manufacturing purposes, or for all of such purposes.

Sec. 2. The right is hereby granted to any company organized under the authority of this Act, to construct all works necessary to the objects of the company, to make all surveys necessary to the selec-

tion of the best site for the works, and of the lands required therefor, and to acquire all lands, waters not previously appropriated and other property necessary to the proper construction, use, supply, maintenance, repairs, and improvements, of the works, in the manner and by the mode of proceedings prescribed in an Act entitled an Act to provide for the Incorporation of Railroad Companies, and the management of the affairs thereof, and other matters relating thereto, passed May twentieth, eighteen hundred and sixty-one.

Sec. 3. Every company organized as aforesaid shall have power, and the same is hereby granted, to make rules and regulations for the management and preservation of their works, not inconsistent with the laws of this State, and for the use and distribution of the waters and the navigation of the canals, and to establish, collect and receive rates, water rents, or tolls, which shall be subject to regulation by the Board of Supervisors of the County or Counties in which the work is situated, but which shall not be reduced by the Supervisors so low as to yield to the stockholders less than one and one-half per cent per month upon the capital actually invested.

Sec. 4. Every company organized under the authority of this Act, shall construct, and keep in good repair at all times, for public use, across their canal, all of the bridges that the Board of Supervisors of the County or Counties in which such canal is situat-

ed shall require; said bridges being on the lines of public highways, and necessary for public use in connection with such highways.

Sec. 5. The provisions of this Act shall not apply to the Counties of Nevada, Placer, Amador, Sierra, Klamath, Del Norte, Trinity, Butte, Plumas, Calaveras, and Tuolumne.

Sec. 6. This Act shall take effect from and after its passage.

ACT OF 1885.

(Cal. Stats. 1885, p. 95.)

An Act to regulate and control the sale, rental and distribution of appropriated water in this State, other than in any city, city and county, or town therein, and to secure the rights of way for the conveyance of such water to the places of use.

(Approved March 12, 1885.)

The people of the State of California, represented in Senate and Assembly, do enact as follows:

Section 1. The use of all water now appropriated or that may hereafter be appropriated, for irrigation, sale, rental or distribution, is a public use, and the right to collect rates or compensation for use of such water is a franchise, and except when so furnished to any city, city and county, or town, or the inhabitants thereof, shall be regulated and controlled in the counties of this State by the several Boards of Super-

visors thereof, in the manner prescribed in this Act.

Sec. 2. The several Boards of Supervisors of this State, on petition and notice as provided in Section 3 of this Act, are hereby authorized and required to fix and regulate the maximum rates at which any person, company, association, or corporation having, or to have appropriated water for sale, rental or distribution, in each of such counties, may and shall sell, rent, or distribute the same.

Sec. 3. Whenever a petition of not less than twenty-five inhabitants, who are tax-payers of any county of this State shall, in writing, petition the Board of Supervisors thereof, to be filed with the clerk of said Board, to regulate and control the rates and compensation to be collected by any person, company, association or corporation, for the sale, rental, or distribution of any appropriated water, to any of the inhabitants of such county, and shall in such petition specify the persons, companies, associations, or corporations, or any one or more of them, whose water rates are therein petitioned to be regulated or controlled, the clerk of such Board shall immediately cause such petition together with a notice of the time and place of hearing thereof, to be published in one or more newspapers published in such county; and if no newspaper be published therein, then shall cause copies of such petition and notice to be posted in not less than three public places in such counties, and such publication and notice shall be for not less

than four weeks next before the hearing of said petition by such Board; such notice to be attached to said petition shall specify a day of the next regular term of the session of the said Board, not less than thirty days after the first publication or posting thereof, for the hearing of said petition, which shall impart notice to all such persons, companies, associations, and corporations mentioned in such petition, and all persons interested in the matters of such petition and notice. Such Board may also cause citations to issue to any person or persons within such county, to attend and give evidence at the hearing of such petition, and may compel such attendance by attachment.

Sec. 4. At the hearing of said petition, the Board of Supervisors shall estimate, as near as may be, the value of the canals, ditches, flumes, water chutes, and all other property actually used and useful to the appropriation and furnishing of such water, belonging to and possessed by each person, association, company or corporation, whose franchise shall be so regulated and controlled, and shall in like manner estimate as to each of such persons, companies, associations, and corporation, their annual reasonable expenses, including the cost of repairs, management and operating such works; and for the purpose of such ascertainment, may require the attendance of persons to give evidence and the production of papers, books and accounts, and may compel the attendance of such persons and the production of papers, books, and ac-

counts by attachments, if within their respective counties.

Sec. 5. In the regulation and control of such water rates, for each of such persons, companies, associations, and corporations, such Board of Supervisors may establish different rates at which water may and shall be sold, rented or distributed, as the case may be; and may also establish different rates and compensation for such water so to be furnished for the several different uses, such as mining, irrigating, mechanical, manufacturing and domestic, for which such water shall be supplied to such inhabitants, but such rates as to each class shall be equal and uniform. Said Boards of Supervisors, in fixing such rates, shall, as near as may be, so adjust them that the net annual receipts and profits thereof to the said persons, companies, associations, and corporations so furnishing such water to such inhabitants shall be not less than six nor more than eighteen per cent upon the said value of the canals, ditches, flumes, chutes and all other property actually used and useful to the appropriation and furnishing of such water of each of such persons, companies, associations and corporations; but in estimating such net receipts and profits, the cost of any extensions, enlargements, or other permanent improvements of such water rights or water works, shall not be included as part of the said expenses of management, repairs, and operating of such works, but when accomplished, may and shall

be included in the present cost and cash value of such work. In fixing said rates, within the limits aforesaid, at which water shall be so furnished as to each of such persons, companies, associations, and corporations, each of said Board of Supervisors may likewise take into estimation any and all other facts, circumstances and conditions pertinent thereto, to the end and purpose that said rates shall be equal, reasonable and just, both to such persons, companies, associations, and corporations and to said inhabitants. The said rates when so fixed by such board, shall be binding and conclusive for not less than one year next after their establishment, and until established anew or abrogated by such Board of Supervisors, as hereinafter provided. And until such rates shall be so established, or after they shall have been abrogated by such Board of Supervisors, as in this Act provided, the actual rates established and collected by each of the persons, companies, associations and corporations, now furnishing or that shall hereafter furnish, appropriated waters for sale, rental or distribution, to the inhabitants of any of the counties of this State, shall be deemed and accepted as the legally established rates thereof.

Sec. 6. At any time after the establishment of such water rates by any Board of Supervisors of this State, the same may be established anew, or abrogated in whole or in part by such Board, to take effect not less than one year next after such first establishment, but

subject to said limitation of one year, to take effect immediately in the following manner: Upon the written petition of inhabitants, as hereinbefore provided, or upon the written petition of any of the persons, companies, associations or corporations, the rates and compensations of whose appropriated waters have already been fixed and regulated, and are still subject to such regulation by any Board of Supervisors of this State, as in this Act provided; and upon the like publication or posting of such petition and notice and for the like period of time as hereinbefore provided, such Board of Supervisors shall proceed anew, in the manner hereinbefore provided, to fix and establish the water rates for such person, company, association or corporation or any number of them, in the same manner as if such rates had not been previously established, and may, upon the petition of such inhabitants, but not otherwise, abrogate any and all existing rates theretofore established by such board. All water rates when fixed and established as herein provided, shall be in force and effect until established anew or abrogated, as provided in this Act.

Sec. 7. Each Board of Supervisors of this State, when fixing and establishing, or fixing and establishing anew, or abolishing any previously established water rates, as hereinbefore provided, shall cause a record to be made thereof in the records of such Board, and cause the same to be published or posted in the manner and for the time required for

the publication or posting of said petitions and notices.

Sec. 8. Any and all persons, companies, associations, or corporations, furnishing for sale, rental, or distribution, any appropriated waters to the inhabitants of any county or counties of this State (other than to the inhabitants of any city, city and county, or town, therein), shall so sell, rent, or distribute such waters at rates not exceeding the established rates fixed and regulated therefor by the Boards of Supervisors of such counties, or as fixed and established by such person, company, association, or corporation as provided in this Act.

Sec. 9. If any person, company, association, or corporation, whose water rates for any county of this State have been fixed and regulated by a Board of Supervisors, as in this Act provided, and while such rates are in force, shall collect for any appropriated water furnished to any inhabitant of such county water rates in excess of such established rates, shall be liable in an action by any such inhabitant so aggrieved, to a recovery of the whole rate so collected, together with actual damages sustained by such inhabitant with costs of suit.

Sec. 10. Every person, company, association, and corporation having in any county in the State (other than in any city, city and county, or town, therein), appropriated waters for sale, rental, or distribution, to the inhabitants of such county, upon demand therefor, and tender in money of such established

water rates, shall be obliged to sell, rent or distribute such water to such inhabitants at the established rates regulated and fixed therefor, as in this Act provided, whether so fixed by the Board of Supervisors or otherwise, to the extent of the actual supply of such appropriated waters of such person, company, association, or corporation, for such purposes. If any person, company, association or corporation having waters for such use, shall refuse compliance with such demand, or shall neglect, for the period of five days after such demand to comply therewith to the extent of his or its reasonable ability so to do, shall be liable in damages to the extent of the actual injury sustained by the person or party making such demand and tender, to be recovered with costs.

Sec. 11. Whenever any person, company, association or corporation shall have acquired the right to appropriated water, or shall have acquired the right to apropriate such water in this State, such person, company, association or corporation may proceed to condemn the lands and premises necessary to such right of way, under the provisions of title seven, of part third, of the Code of Civil Procedure of this State, and amendments made and to be made thereto, and all the provisions of said Code, so far as the same can be made applicable, relating to the condemnation and taking of property for public uses, shall be applicable to the provisions of this Act.

Sec. 12. This Act shall take effect and be in force from and after its passage.

ARGUMENT.

I.

THE CIRCUIT COURT HAD NO JURISDICTION IN EQUITY OF THIS CASE.

1. THE CIRCUIT COURT HAD NO JURISDICTION IN EQUITY ON THE ALLEGED GROUND OF PREVENTING A MULTIPLICITY OF SUITS, BECAUSE THE DEFENDANTS SUED HAVE NO POWER TO ENFORCE THE RATES AND BECAUSE THE DECREE PRAYED FOR AND OBTAINED IN THIS CASE CANNOT BIND THE RATE-PAYERS WHO ARE NOT PARTIES HEREIN, AND WHO ALONE HAVE THE RIGHT TO ENFORCE THE RATE-ORDINANCE. DEFENDANTS ARE IMPROPERLY SUED, AND NO CASE IN EQUITY WAS EITHER ALLEGED OR PROVED AGAINST THEM.

Complainant alleged in its bill of complaint "that "unless immediate relief is granted, your orator will "be harassed by a multiplicity of actions to enforce "and require it to furnish its waters to its customers "and all persons desiring to use the same at the rates "fixed by the defendants in this cause." (Rec., 7.)

This allegation was denied in the answer. (Rec., 29.)

The only parties made defendants are the County of Stanislaus and the members of the Board of Supervisors of that county, in their official capacities as Supervisors. The decree prayed by complainant

was, in substance, that the rate-ordinance passed by the Supervisors of Stanislaus County be declared invalid and void, and that an injunction issue restraining the County of Stanislaus and its Supervisors from enforcing it. (Rec., 8.) And such, substantially, was the decree made by the Circuit Court. (Rec., 36.)

The rate-ordinance complained of was passed by the said Supervisors on the 26th day of June, 1896, solely under the authority of an Act of the Legislature of the State of California, enacted in 1885, and which is printed in full in this brief preceding this argument.

That Act provides, so far as is material to this point, that the Supervisors, upon notice and hearing, shall fix the rates to be charged by complainant Irrigation Company. (Secs. 3, 4, 5.) It is then provided in Section 9 of the Act that, should the complainant, after such rates are so fixed, collect rates in excess of those so fixed, it should be liable *to the person aggrieved,* in an action by him, to a recovery of the whole rate so collected, together with actual damages sustained by him, with costs of suit; and in Section 10 that, should complainant, upon the tender to it of the rate so fixed and a demand for the water, refuse to comply to such demand to the extent of its reasonable ability, it shall be liable in damages to the extent of the actual injury sustained by the person making such demand. *The statute in question*

nowhere provides that the county or its Supervisors, or any official, shall enforce the rate-ordinance, or have anything whatever to do with its enforcement.

All matters relating to the enforcement of the ordinance are entirely in the hands and under the *exclusive control of the rate-payers, and they may or may not enforce it as they see fit.* This being so, it appears that complainant, to prevent the enforcement of this rate-ordinance, has herein sued, not the persons who alone have the express authority and right to enforce it, but those who have no authority to enforce it, and who have no interest in seeing that it is enforced, and who have no duty or obligation in connection with it after its passage. This point was made on demurrer to the bill of complaint, and, as their brief shows, was urged by counsel for defendants; but the Judge of the Circuit Court, in his opinion overruling the demurrer, did not refer to it. (Rec., 12, 13, 15.) (90 Fed. Rep., 516.) It is, of course, obvious that, if this point be well taken, the decree prayed for and granted in this suit, viz., enjoining the County of Stanislaus and its Supervisors from enforcing this rate-ordinance, and for $1,870.30, costs, is a vain and useless thing, since it would not be *res adjudicata* as to the right of each rate-payer to enforce the ordinance. The substantive question presented therefore is, were the County of Stanislaus and its Supervisors, at the time this suit was brought, September 29, 1896, three months after

the passage of the ordinance, the representatives of and in privity with the rate-payers in that county to the extent that a judgment against the former binds and estops the latter? We say that such cannot be so, in law or in fact, because immediately upon the passage of the ordinance, the County and its Supervisors, in law and in fact, ceased to be, in any sense or degree, the representatives of or in privity with the rate-payers, with reference to the enforcement of the rates provided by the ordinance.

An inspection of the Act of 1885 will fail to show that the County or its Supervisors have, after its passage, authority to do a single act or thing, providing for the enforcement in any manner of this rate-ordinance. It therefore seems clear that there cannot be the slightest ground for complainant's contention that the defendants in this suit represent the rate-payers in the matter of enforcing this ordinance. The County and its Supervisors cannot represent the rate-payers without some authority by statute, and there is no such statute. There being no right in the defendants to represent the rate-payers in the matter of enforcing this ordinance, *and its enforcement being entirely dependent upon the will and acts of the rate-payers,* it follows that no such privity exists between them as would bind the rate-payers by a judgment in this suit against the defendants.

Again, this ordinance vested in each rate-payer the property right or privilege to the reduced rate

fixed by this ordinance, and in order to hold that he can be deprived of this property right or privilege in a suit to which he is not a party, and in which he is not given an opportunity to be heard in defense of his rights, it should appear in the clearest manner, and not by mere implication, that the defendants in such suit have the legal right to represent him.

In *New Orleans Water Works Co.* vs. *New Orleans,* 164 U. S., 471, the water company claimed to possess the exclusive right to lay certain pipes and furnish water in a certain part of the City of New Orleans, and it was charged in the bill of complaint, which was against the city alone, that the city had, by ordinance, granted to a large number of corporations, associations and individuals the privilege of laying pipes and conveying water in derogation of complainant's exclusive rights, and a decree was prayed to adjudge said ordinances to be void, to have them recalled and cancelled, and to enjoin the city from granting any further like privileges. This Court decided that such relief could not be granted because it would be in derogation of the rights of persons claiming under the ordinances, and that such persons were not parties to the suit. Mr. Justice Harlan delivered the opinion of the Court, saying: "It appears from the bill of complaint—the "facts therein set forth being admitted by demurrer "—that the City of New Orleans has, by ordinance, "granted to a large number of corporations, asso-

"ciations and individuals the privilege of laying "pipes in its streets for the purpose of conveying "water to their respective premises from the Missis- "sippi. These ordinances, the plaintiff contends, "are in derogation of its rights and privileges as "heretofore declared and adjudged by this Court in "the *Rivers* and *Tamany cases. None of the parties "for whose benefit the ordinances above referred to "were passed were brought before the Court or "given an opportunity to be heard.* Nevertheless, "the plaintiff seeks a decree, not only declaring these "ordinances to be null and void, but requiring the "city within a named time to recall, expunge, repeal "and cancel each ordinance that does not relate to "premises contiguous to the Mississippi River; and "if the city does not within such time, and in some "public way, cancel and annul those ordinances, "then that the Court, in this suit, shall adjudge and "decree them to be null and void, as legally inter- "fering with the rights of plaintiff. We do not sup- "pose that any precedent could be found that would "justify a court of equity in giving such relief. *A "decree declaring the ordinances in question void "would have no effect in law upon the rights of the "beneficiaries named in the ordinances, for, in the "absence of the parties interested and without their "having an opportunity to be heard, the Court "would be without jurisdiction to make an adjudi- "cation affecting them.* Such a decree would ap-

" pear upon the very face of the record, not to be due " process of law, and could be treated everywhere " as a nullity. *Windsor* vs. *McVeigh*, 93 U. S., 274, " 277; *Pennoyer* vs. *Neff*, 95 U. S., 714, 733; *Scott* " vs. *McNeal*, 154 U. S., 34, 46." (p. 480.) (*Italics ours.*)

We fail to perceive any difference in principle between the foregoing case and the one at bar. In each, persons claim substantive property rights conferred by ordinance. In each, *the assertion and enforcement of such rights are dependent upon the will and acts of such persons only*, and not upon the will or acts of the municipal bodies granting them; and in each, such persons are not made parties to bills in equity to abrogate such rights.

St. Louis & San Francisco Ry. Co. vs. *Gill*, 156 U. S., 649, is also in point. That case was an action at law by an individual to recover of the railroad company a statutory penalty for charging him excessive fares. The fares had been fixed by an Act of the Legislature of Arkansas (p. 651), and there was no commission or officer authorized *to enforce* the Act (p. 666). As to the proper remedy in such case this Court, through Mr. Justice Shires, said: " Sometimes in acting on this subject the State Leg- " islatures have created commissions or boards of " public works with power to establish rates for the " transportation of passengers and freight, and *in* " *such instances* the course recommended by Mr.

"Justice Miller, already cited, may well be fol-
"lowed; that the remedy for a tariff alleged to be
"unreasonable should be sought by bill in equity or
"some equivalent preceding, wherein the rights of
"the public as well as those of the company com-
"plaining can be protected. But there are other
"cases, and the present is one, where the legislatures
"choose to act directly on the subject by themselves
"establishing a tariff of rates and prescribing penal-
"ties. *In such cases there is no opportunity to resort*
"to a compendious remedy, such as a proceeding in
"equity, because there is no public functionary or
"commission which can be made to respond, and
"therefore, if the companies are to have any relief it
"must be found in a right to raise the question of the
"reasonableness of the statutory rates by way of de-
"fense to an action for the collection of the penal-
"ties." (p. 666.) (*Italics ours.*) This is directly applicable to the Act of 1885, under which the Board of Supervisors are given no power to enforce the rates, and where the power of enforcement is vested in the rate-powers only.

There is no principle of equity that will sustain a bill against a legislative body, even exercising judicial functions, for the *sole purpose* of having its statute or ordinance adjudged invalid. An Act of a legislative body can be declared invalid only in a case where its enforcement would inflict a wrong. The remedy by injunction is to prevent wrong, and conse-

quently, a suit like this can only be maintained to prevent such enforcement and against those whose duty it is, or who have a right to enforce the invalid statute or ordinance. This doctrine would seem to be elementary. Such have been the nature of the suits in equity in rate fixing and kindred cases that have been decided by this Court.

Chicago B. & Q. R. R. Co. vs. *Iowa* (94 U. S. 155), was a bill in equity filed by the lessee of a railroad company to restrain the Attorney-General of the State of Iowa "*from prosecuting suits against it or its officers*" for the violation of an act of the legislature establishing the maximum rates of fare and freight.

Peik vs. *Chicago, etc., Ry.* (94 U. S. 164), was a bill in equity by stockholders and bondholders of a railroad company to restrain the company from obeying, and the Railroad Commissioners and the Attorney-General *from enforcing,* as they were given power to do, the provisions of an act of the legislature limiting the rates of fare and freight (p. 165).

Railroad Commission Cases (116 U. S. 307), was a bill in equity to restrain the Railroad Commissioners of Mississippi *from enforcing,* as they had power to do, the provisions of an Act of the Legislature (pp. 307-8), providing for the fixing by the Com-

mission of a tariff of rates, and providing penalties for its violation (pp. 313-14).

Georgia Railroad vs. *Smith* (128 U. S. 174), was a bill in equity against the Railroad Commissioners and the Attorney-General of the State of Georgia to enjoin the Commissioners from prescribing rates of fare and freight over the complainants road "*or in* "*any manner enforcing* the provisions of the act "against them." (pp. 176-7). The act was not only to provide for fixing rates by the Commissioners but to prohibit the roads from charging other than reasonable rates "and to punish the same." (p. 176).

Reagan vs. *Farmers' Loan etc., Co.* (154 U. S. 362), was a bill in equity on behalf of the bondholders of a railroad company, against the Railroad Commissioners and the Attorney-General of the State of Texas to restrain them from making *or enforcing* rates of fare and freight for said company, they having such authority (pp. 362-9).

Covington Turnpike Co. vs. *Sandford* (164 U. S. 578), was a bill in equity filed by the persons residing along the road of a turnpike company, *to restrain it from carrying out its announced purpose* of disregarding the rates of toll fixed by an act of the Legislature (p. 580).

Smyth vs. *Ames* (169 U. S. 466), was a bill in equity by stockholders in a corporation to enjoin the Attorney-General and other officers of the State, constituting the Board of Transportation, *from enforcing*, as they had authority to do, the provisions of an act of the Legislature in relation to rates. The act was to fix reasonable maximum rates of freight upon railroads and "to provide penalties for the violation of this act" (p. 470). The decree, among other things, enjoined the Board of Transportation "from instituting or prosecuting or causing to be instituted or prosecuted any action or proceeding, "civil or criminal, against either of said companies," etc., and that "the Attorney-General of this State be "in like manner enjoined from bringing or causing "to be brought any proceeding by way of injunction, "mandamus, civil action or indictment against said "companies." etc. (p. 477.)

San Diego L. & T. Co. vs. *Nat. City* (174 U. S. 739). This case related to the fixing of water rates by the Board of Trustees of National City, in California, and was not under the acts involved in the case at bar, but under the Constitution of the State and the Act of 1881. The constitution does not charge the legislative body with any duty after the ordinance fixing the rate is passed; but the Act of 1881, passed in pursuance of the constitution, provides that if any greater rates are charged or collect-

ed than those authorized by law, the company "*upon* "*complaint* of said Board of Supervisors, Town "Council, Board of Aldermen, or other legislative "body thereof, or of any water-rate payer, and upon "conviction before any court of competent jurisdic- "tion, shall forfeit the franchises and works," etc. (Laws 1881, p. 54, Sec. 8). The report of the case in the Supreme Court does not disclose the kind of suit or proceeding, but the record of the case in the Court below shows that the case was a bill in equity brought for the purpose of having the rates fixed adjudged to be void "*and their enforcement enjoined.*" (74 Fed. p. 80.)

Cotting vs. *Kans. City Stockyards Co.* (183 U. S. 79). The report of this case in this Court states that it was by a stockholder against his corporation and the State of Kansas. The report of the case in the Court below, however, shows that this was an abbreviation; and that the bill was against the stockholders corporation and *the Attorney-General* of the State of Kansas, to enjoin the *enforcement* of an Act of the Legislature (79 Fed. Rep. p. 680). The Act among other things established rates for the handling and feeding of cattle, and provided penalties for its infraction (183 U. S. pp. 680-1).

Detroit vs. *Detroit Citizens' St. Ry. Co.* (184 U. S. 368), was a suit in equity to have adjudged void as impairing the obligation of contract, and to enjoin

the enforcement of an ordinance changing certain rates of fare.

The question as to whether or not the Circuit Court had jurisdiction of the suit, as a suit in equity, was not raised by the defendant, but appears to have been first raised by this Court itself.

It was held by this Court that, the jurisdiction of the Circuit Court would be sustained, but such decision was based largely upon the fact that the defendant neither made nor urged any objection against jurisdiction. It further appeared in that case and was alleged in the bill of complaint that, upon complainant's refusal to obey the ordinance it would be subjected to numerous suits, and that the City of Detroit threatened by vexatious legal proceedings to *compel complainant's compliance with the invalid ordinance,* and this last allegation was admitted by the answer (pp. 370-2). It also appeared that the ordinance could be enforced, or its enforcement attempted against complainant, by the city officers who had been made parties defendant (p. 380).

San Diego L. & T. Co. vs. *Jasper* (189 U. S. 439), was a suit in equity brought against the Supervisors of San Diego County and the twenty-five petitioning tax-payers to have declared invalid and to enjoin the enforcement of the water rate ordinance passed by the Supervisors under the Act of 1885, involved in the case at bar. The Circuit Court held the water

rates sufficient and dismissed the bill, whereupon the Water Company appealed to this Court. It seems that the twenty-five defendant tax-payers made default and that the bill was taken *pro confesso* as to them, and that appellant, the Water Company, then claimed that the Supervisors had no authority to defend the suit (p. 440).

This Court, through Mr. Justice Holmes, held otherwise (p. 441). It will be observed as to this decision in the first place that, it was in response to the Water Company's effort to have the Court decide that the Supervisors were not a proper parties defendant in face of the fact that the Water Company had made them parties, and, secondly, that the question presented in the case at bar as to whether or not the Supervisors represented the rate-payers *for the purpose of enforcing the rate* does not appear to have been presented to the Court, or decided.

The Supervisors made no such point or defense in that case, for the Court says, "the Board is here ad-"hering to and defending its action, professing still "to be satisfied" (p. 441). But in the case at bar, the defendant County and its Supervisors have throughout all the proceedings contended that they are improperly sued.

Upon consideration of the Act of 1885, of the foregoing decisions and of the principles involved, we do not see how it can be successfully maintained that the County of Stanislaus, or its Supervisors, in any

sense can be held to represent the rate-payers with reference to the enforcement of this ordinance, especially since its enforcement is left by the statute entirely at the will of each rate-payer. *None of the* rate-payers may enforce this ordinance by legal proceedings. There is no allegation in the bill of complaint that any of them threaten to do so. *There is not even any allegation in the bill nor proof on the trial that the defendants, or any of them, threaten any sort of litigation or proceeding against complainant or its property.* This being so, it does not appear that complainant ever was or is in danger of a multiplicity of suits; and finally, even should suits be imminent, we cannot see how they can be enjoined unless those who alone can enforce the ordinance, are before the Court and given an opportunity to defend their rights.

THERE CAN BE NO ESTOPPEL BY IMPLICATION.

If the defendants represent the rate payers as to the enforcement of these rates, such representation, and hence the estoppel of the judgment, can arise only because of some attenuated sort of implication. But it is well settled doctrine that estoppel by judgment cannot arise by implication, but must be certain to every intent.

Russell vs. *Place,* 94 U. S. 606.
Richardson vs. *Eureka,* 110 Cal. 445.
Aiken vs. *Peck,* 22 Vt. 260.
Fink vs. *Martin,* 5 La. Ann. 104.

2. THE CIRCUIT COURT HAD NO JURISDICTION OF THIS SUIT IN EQUITY BECAUSE COMPLAINANT HAD AN ADEQUATE REMEDY AT LAW.

It is settled by decisions of this Court, that persons seeking relief from erroneous or oppressive taxation, where no fraud is charged, cannot apply to a Court of equity for relief, until they have exhausted the State statutory remedies provided for the correction of the alleged invalid assessments or levies.

Supervisors vs. *Stanley,* 105 U. S., p. 315.
Stanley vs. Supervisors, 121 U. S., p. 550.

The same principle applies to this case. By Section 6 of the Act of 1885, it is provided that the water rates fixed by the Supervisors can, on application of the Water Company, be abrogated and new rates fixed; such new rates "to take effect not lesss than one year next after such first establishment." In this case, the obnoxious rates went into effect on the 26th day of June, 1896 (Rec. 460), so that, under the terms of the statute, complainant could have applied to the Supervisors immediately after the rates had been so fixed, for their abrogation and for new rates, and which new rates could have been put into opera-

tion on the 26th day of June, 1897. Complainant having failed to apply for such relief under the statute, cannot maintain this suit. There is no allegation in the bill or proof in this case that the Supervisors were corrupt or guilty of fraud.

In *San Diego L. & T. Co.* vs. *Jasper,* 189 U. S. 439, this Court said as to the point here made and as to this same statute of 1885, "Coming now to the "merits, the first thing to be noticed is that the ordi- "nance complained of took effect in November, "1897, and that after a year from that date appellant "was free to apply for a modification of the rates. "It did not do so. There is no allegation or sugges- "tion that the Board is corrupt or that it proposes "and intends, without regard to evidence, to adhere "to unjust rates so as to destroy or impair the value of "appellant's works. Under such circumstances the "question arises whether this is much more than a "moot case, in view of the principles adverted to in "*Tennessee* vs. *Condon,* ante p. 64, or at least "whether appellant should not be required to ex- "haust its other remedies before coming into "Court."

In the case at bar, the rates went into effect June 26th, 1896, the bill of complaint was filed on the 29th day of September, 1896 (Rec. 9). No preliminary or provisional injunction was asked for, but complainant up to the close of the testimony on the

trial on December 1st, 1899 (Rec. 446), collected for at least the years 1897 and 1898, from the rate-payers in Stanislaus County only the rates so fixed in June, 1896, and here attacked as invalid (Rec. 103, 416, 430). This suit was argued and submitted for decision on December 20th, 1899, and decided by the Circuit Court on the 6th day of January, 1902 (Rec. 51).

Consequently it appears with certainty from this record that, an application to the Supervisors under the Statute for a modification of the rates would have furnished a far speedier remedy than by resorting to this suit. Under the law, such application was open to complainant. It was an adequate remedy, and it could not, in law, be held to have been inadequate until it had at least been tried and exhausted. The rates could not have operated any hardship on complainant, since until the end of the irrigation year on June 30th, 1897, it could not have been ascertained with any certainty, how the rates would affect its business. Complainant, after the fixing of the alleged unfair rates, even voluntarily reduce its rates in the Counties of Merced and Fresno (Rec. 122, 421, 435). From all of which we contend that, complainant had an adequate remedy at law, and hence cannot maintain this suit in equity, and that this suit presents a mere moot or academic question.

Should it be held that, for any reason, complainant had no adequate remedy at law, then its remedy

in equity was to sue the rate-payers as indicated by the learned author where he says that a bill will lie by one against many, although the claims be separate and may have arisen at different times, if such claims present a question common to all and where the same character of relief may be granted as against all (Pomeroy's Eq. Jur. 2nd Ed. Vol. I. Sec. 274.)

This course was followed by the Receiver of a National Bank against the stockholders, where the Court held that to sustain such suit a community of interest was not necessary, but only a common question of law.

Bailey vs. *Tillinghast,* 40 C. C. A. 93.

II.

THE ACT OF 1885 PROVIDING A DIFFERENT BASIS OF VALUATION AND DIFFERENT WATER RATES FROM THOSE RELIED ON BY COMPLAINANT AS PROVIDED BY THE ACT OF 1862, DOES NOT VIOLATE SECTION 10 OF ARTICLE 1 OF THE CONSTITUTION OF THE UNITED STATES AS TO THE IMPAIRMENT OF THE OBLIGATION OF CONTRACTS.

Complainant alleges in its bill of complaint that, it was incorporated in September, 1871, under the acts of April 14th, 1853 (the then general incorporation law), and also under the amendatory act of May 14th, 1862 (Rec. 1).

The Act of 1853 was a general Act authorizing the organization of corporations "for the purpose of engaging in any species of trade or commerce," but it did not undertake to provide for the regulation or fixing of rates to be charged by corporations engaged in the business of selling water. It, however, authorized the corporation "to purchase, hold, sell "and convey such real and personal estate as the "purposes of incorporation shall require."

Under this general incorporation Act of 1853, complainant, *irrespective of the Act of 1862,* had the right to engage in the business of acquiring, furnishing and selling water.

Heyneman vs. *Blake,* 19 Cal. p. 594.

The Act of 1862 is hereinbefore printed in full in this brief. By Section 3 of that Act, it is provided that the rates of a canal and irrigation company might be regulated "by the Board of Supervisors "of the County or Counties in which the work is "situated, but which shall not be reduced by the Su- "pervisors so low as to yield to the stockholders less "than *one and one-half per cent. per year upon the "capital actually invested."* (*Italics ours.*) As will be seen from reading it, this Act of 1862 is extremely crude, failing to provide for any notice to the Water Company or to the rate payers, or as to how long the rates so fixed shall be enforced, or for new rates.

In 1880, the Legislature of California, passed a much more comprehensive Act covering this matter and by which the Boards of Supervisors of the counties were required to fix each year the "maximum rates" at which water should be sold for irrigation, but no maximum or minimum rates were specified, nor was any basis of valuation provided by that Act (Stats. 1880, p. 59).

In 1885 was enacted the Act under which the Supervisors of Stanislaus County fixed the water rates in controversy in this suit. (That Act is hereinbefore printed in full in this brief before the argument.) This Act of 1885 is far more complete in its provisions than any of the former acts. It provides for the initiation of proceedings before the Board of Supervisors to fix rates by the petition of twenty-five taxpayers; that there shall be regular notice and hearing; that the rates shall be fixed upon the value of the property used and useful in supplying water; that such rates shall not be "less than six nor more than eighteen per cent. upon said value;" that the Water Company, or rate-payers, may petition that, at the end of a year, the old rate be set aside and new rates be fixed; that the rate-payers can recover damages from the Water Company if it does not furnish water at the rates fixed, and that the Water Company shall have the right of eminent domain.

Obviously, this Act of 1885, was intended to supercede these prior acts, and while it does not expressly

in terms repeal them, nevertheless it is so clearly repugnant to the Act of 1862, especially as to the per cent. of rates and the basis of valuation in determining those rates, that the Act of 1862, as to those matters cannot stand, but is in law repealed on the ground that such provisions in the Act of 1885 are wholly inconsistent with and repugnant to the provisions as to the same matters in the Act of 1862.

Miller vs. *Curry*, 113 Cal. 644.
Dillon vs. *Bicknell*, 116 Cal. 111.

Accordingly, complainant during the trial of this suit, amended its bill of complaint with the allegations that it had, prior to the passage of the Act of 1885, invested $971,113.13 in its works, and that if the Act of 1885 repealed the Act of 1862, it impaired the alleged contract between complainant and the State of California under the Act of 1862, as to rates and basis of valuation, and, therefore, violated Section 10 of Article 1 of the Constitution of the United States.

1. THE ACT OF 1862 RELIED ON BY COMPLAINANT AS CONSTITUTING A CONTRACT BETWEEN IT AND THE STATE WAS AND IS UNCONSTITUTIONAL AND VOID, IN THAT, IT WAS A SPECIAL AND LOCAL ACT EXCEPTING ELEVEN COUNTIES FROM ITS OPERATION, AND THEREFORE IN VIOLATION OF SECTION 31 OF ARTICLE IV OF THE CONSTITUTION OF CALIFORNIA OF 1849.

When complainant was incorporated in 1871, and when the Act of 1862 was passed, the Constitution of the State of California in force was that adopted in 1849, and the same continued in force until the adoption in 1879 of the present Constitution of that State.

Section 31 of Article IV of the Constitution of 1849, provided, that "Corporations may be formed "under *general laws,* but shall not be created by "*special Act,* except for municipal purposes. All "general laws and special acts passed pursuant to "this section may be altered from time to time or re-"pealed." (*Italics ours.*) Section 11 of Article I of the same Constitution provided that "all laws of a general nature shall have a uniform operation."

Now, it is expressly provided by Section 5 of this Act of 1862, that "the provisions of this Act *shall not* "*apply* to the Counties of Nevada, Placer, Amador, "Sierra, Klamath, Del Norte, Trinity, Butte, Plu-"mas, Calaveras and Tuloumne." (*Italics ours.*) In other words, irrigation companies might operate in these eleven counties without having their rates subject to regulation by the State through the Boards of Supervisors, while they would be subject to such regulation in all other counties of the State. There were, when this Act was passed, at least sixty counties in the State of California. It is difficult to conceive of legislation more vicious in character than this. While it is true that, in general, special legis-

lation was not prohibited by the Constitution of 1849, nevertheless, it was, as we have seen, expressly prohibited as to corporations other than municipal, and the Courts of California strictly enforced the Constitutional inhibition in that regard.

In *San Francisco* vs. *Spring Valley Water Works,* 48 Cal. 493, the defendant company had been incorporated in 1857, under the general incorporation Acts of 1853 and 1855, to introduce water into the City of San Francisco (p. 495). On the 23rd day of April, 1858, the Legislature passed an Act applicable and limited to said Water Company *only,* granting certain franchises, and, among others, providing that the water rates to be fixed "shall not be so low "as to yield less than twenty per cent. per annum "on the actual capital invested in said works." The Supreme Court of California in two elaborate opinions (the last one on re-hearing), decided the Act in question to be unconstitutional because in violation of the provision against special legislation as to corporations. The decision on this point was aptly summarized by McKinstry, Justice, in his concurring opinion as follows: "The Legislature could "neither confer a benefit nor impose an obligation "on the Spring Valley Water Works not conferred "or imposed on all the water companies by the gen- "eral law. To confer a special benefit or impose a "special obligation would be equally destructive of "the uniformity which it is the object of Section

"31, of Article IV of the Constitution to secure."

The Court, in the case last cited, also reversed the decision in *California S. T. Co.* vs. *Alta Tel. Co.*, 22 Cal. 398 (pp. 515-523).

In *Waterloo T. P. R. Co.* vs. *Cole*, 51 Cal. 381, plaintiff, a turnpike road company, was incorporated in 1869, to construct a road in the County of San Joaquin. In 1867 (Stats. 1867-8, p. 169) the Legislature had passed an Act authorizing the Supervisors of San Joaquin County to grant certain franchises and privileges to and impose certain obligations upon turnpike corporations, and among others, the franchise to collect tolls not to exceed twelve per cent. per annum on the amount expended. The Court held that the act was in violation of the foregoing constitutional provision against special legislation to corporations; the Court saying as to the Act in question, "The last named Act, in so far as it au-
"thorizes the Board of Supervisors to grant to a
"turnpike corporation franchises to be enjoyed and
"exercised within that County, *which are not com-*
"mon to all other similar corporations under the
"general law, is unconstitutional and void. (*San*
"Francisco vs. *Spring Valley Water Works*, 48 Cal.
"493). The Act is obnoxious to several objections,
"on this ground: It requires the Board of Super-
"visors to authorize the corporation to collect such
"tolls as will produce a net revenue not exceeding
"twelve per cent. per annum on the amount expend-

"ed; limits the franchise to twenty years, at the end "of which term the road is to be surrendered to the "County, in good repair, and in the meantime the "County may purchase it at cost, less the net amount "received for tolls. *Under the general law there "are no such conditions applicable to turnpike road "corporations generally, and none such can be estab- "lished under our Constitution by special Act ap- "plicable to only a portion or a particular class of "such corporations.* The act is, therefore void, in "so far as it attempts to confer upon corporations "new or peculiar franchises, or impose upon them "additional obligations not applicable to all other "similar corporations formed under the general "law." (*Italics ours.*) This decision is especially in point here, since the ground of the Court's decision was that the Constitutional provision had been violated in confining the franchise as to tolls and other privileges and obligations to turnpike corporations operating in San Joaquin County, whereas such corporations in other counties of the State were not given such franchises nor subjected to such obligations. In other words, the Act was special because local, confined in its operation to one County, and not general throughout the State, so as to apply to all turnpike corporations in the State.

The foregoing two decisions of the Supreme Court of California have been repeatedly re-affirmed by

that Court in many subsequent cases, among them we cite:

Spring Valley W. W. vs. *Bryant*, 52 Cal. p. 140.
Omnibus Ry. Co. vs. *Baldwin*, 57 Cal. p. 164.
Home etc., vs. *Reis*, 95 Cal. p. 150.

In *School District* vs. *Insurance Co.*, 103 U. S. 707, this Court held an Act of the Legislature of Nebraska, authorizing a particular School District to issue bonds, to be void because violative of Section 1 of Article 8 of the Constitution of that State, which declared that "the Legislature shall pass no special Act conferring corporate powers."

The conclusion that the Act of 1862, is unconstitutional, cannot be avoided by the claim that the Legislature had a right to classify irrigation corporations operating in all parts of the State other than in the eleven excepted Counties, as constituting a distinct class. Under no theory can such classification be justified. Under no legally accepted theory of classification can such discrimination be justified. It is settled in California that the Legislature may classify corporations with reference to their character and purpose and legislate for each class separately, such as for banking, railroads, insurance and other kinds of corporations too numerous to mention, but it never has been decided by the Supreme Court of California that the Legislature, under its power

to classify, can limit the operation of a law relating to any class of private or quasi-public corporations to any particular counties or part of the State. It may be contended by counsel that the eleven counties excepted from the operation of this Act were essentially mining counties and that the Legislature, in its wisdom, determined that it was not advisable to regulate the water rates of miners' water ditches. Even should such have been the reason it could not avail against the constitutional provisions cited; but the fact is, that, in addition to these eleven excepted counties, there were then in California many other mining counties containing miners' water ditches, such as El Dorado, Siskiyou, Yuba and Shasta. Why were they not also excepted? It is common knowledge that, from the earliest days in California, water has been conveyed in ditches and canals and sold for mining purposes, but also for irrigating land, for watering stock, and for domestic purposes in all parts of and in every county in the State. It cannot be claimed that the discrimination in this Act was because canals for transporting passengers and freight could not well be constructed in the eleven excepted counties, for even had such then been the fact (which it was not), it would obviously have been unnecessary to make the exception in the statute. But furthermore, as to this, under Section 1 of the Act of 1862, the incorporations thereunder could be for "the construction of canals for the transportation of

"passengers and freights, *or* for the purpose of irri-
"gation *or* water power, *or* for the conveyance of
"water for mining, *or* manufacturing purposes, *or*
"for all of such purposes." (*Italics ours.*) According to its bill of complaint, complainant is engaged solely in the business of "appropriating water for irrigation, sale, rental and distribution for hire" (Rec., 2), and has never, so far as this record discloses, operated its so-called canal for any other purpose.

So far as we have been able to discover, the question of the unconstitutionality of this Act of 1862 has never been raised in or decided by any Court of the State of California, but we contend, under the Californian cases cited, that the Act is clearly unconstitutional. No Board of Supervisors in the State, so far as we have been able to discover, ever assumed to regulate water rates under this Act of 1862, and ever since its passage it has been dead and buried, both in law and in fact, until now, after forty years, it is resurrected by complainant.

As before stated, a holding by this Court that the Act of 1862 is unconstitutional, would not affect the incorporation or business of complainant in regard to acquiring and selling water under the said Act of 1853 (*Heyneman* vs. *Blake,* 19 Cal., p. 594), and it also has such rights, as well as the right of eminent domain under the said Act of 1885.

2. EVEN SHOULD THE ACT OF 1862 BE CONSTITUTIONAL, YET THE WATER RATES AND BASIS FOR FIXING THEM, THEREIN PROVIDED FOR, DID NOT CONSTITUTE AN UNALTERABLE CONTRACT WITH COMPLAINANT, BUT WERE MATTERS OF REGULATION OF A PUBLIC USE SUBJECT TO THE ALTERATIONS MADE BY THE ACT OF 1885, UNDER THE POWER RESERVED TO THE STATE OF CALIFORNIA IN EACH OF ITS CONSTITUTIONS TO ALTER FROM TIME TO TIME OR REPEAL LAWS RELATING TO CORPORATIONS. THE PROVISIONS OF THE ACT OF 1885 ARE REASONABLE AND NOT OPPRESSIVE, AND THE CIRCUIT COURT ERRED IN DECIDING THAT THERE WAS SUCH UNALTERABLE CONTRACT UNDER THE ACT OF 1862 AS TO THE BASIS OF VALUATION OF COMPLAINANT'S WORKS.

Section 31 of Article IV of the Constitution of 1849 provides that "corporations may be formed "under general laws, but shall not be created by "special act, except for municipal purposes. All "general laws and special acts passed pursuant to "this section *may be altered from time to time or re-"pealed."* (*Italics ours.*)

Section 1 of Article XII of the Constitution of 1879 provides, "corporations may be formed under "general laws, but shall not be created by special act. "All laws now in force in this State concerning cor-"porations, and all laws that may hereafter be passed "pursuant to this section, *may be altered from time "to time or repealed."* (*Italics ours.*)

It is provided by Section 1 of Article XIV of the Constitution of 1879 of California that "the use of "all water now appropriated, or that may hereafter "be appropriated, for sale, rental or distribution, is "hereby declared to be a public use, and subject to "the regulation and control of the State, in the man-"ner to be prescribed by law."

Section 2 of the same Article of said Constitution provides: "The right to collect rates or compensa-"tion for the use of water supplied to any county, "city and county, or town, or the inhabitants thereof, "is a franchise, and cannot be exercised except by "authority of and in the manner prescribed by law."

The said Act of 1885 provides in Section 1: "The "use of all water now appropriated, or that may "hereafter be appropriated, for irrigation, sale, ren-"tal or distribution, is a public use, and the right to "collect rates or compensation for use of said water "is a franchise, and except when so furnished to any "city, city and county, or town, or the inhabitants "thereof, shall be regulated and controlled in the "counties of this State by the several Boards of Su-"pervisors thereof, in the manner prescribed in this "Act."

As before seen, the material differences between the Acts of 1862 and 1885 are that, by the Act of 1862, the Supervisors' rates must give the stockholders *not less than eighteen per cent* per annum upon the *capital actually invested,* while under the Act of

1885 the rates must give a profit not less than *six per cent* per annum upon the *value of the properties used and useful in the appropriation and furnishing of water.* It is also provided in the Act of 1885 (Section 5) that, in fixing the rates, the Supervisors "may "likewise take into estimation any and all other facts, "circumstances and conditions pertinent thereto, to "the end and purpose that the rates shall be equal, "reasonable and just both to * * * such cor- "porations and to said inhabitants."

Under this provision the Supervisors could consider the cost of the works in arriving at their value.

The question here presented as to whether or not complainant has an unalterable contract with the State entitling it to have its rates regulated by the Supervisors so that its net profits shall not be less than eighteen per cent per annum upon the capital invested, is one of the main points in this case, since complainant persistently urged, and since the learned Circuit Judge in his opinion in this case held, that the cost of the works was in the chief basis upon which they should be valued by the Supervisors in arriving at the rates to be fixed. We furthermore say that such is one of the main points in this case, because we think we can hereinafter make it clear to the Court that the rates complained of were fair and reasonable upon a fair valuation of the works and considering the service rendered.

This Court has uniformly held that, where at the time a corporation exercising a public use takes its charter and franchises, there exists a provision in the Constitution or other law of the State reserving to the State the right to alter, amend or repeal such charter or the laws under which it was incorporated, that, in such case, the charter and franchises must be construed as having been granted by the State and accepted by the corporation on the express condition that they may be altered, amended or repealed by the State. The only qualification of, or limitation to this rule is, as has been said in *Shields* vs. *Ohio,* 95 U. S., 319, and in other cases, that such "alterations "must be reasonable; they must be made in good "faith, and be sustained within the scope and object "of the act of incorporation. Sheer oppression and "wrong cannot be inflicted upon the guise of amend-"ment or alteration" (p. 324). We do not contend for anything to the contrary in this case. There is nothing in this Act of 1862 making it in any sense or degree a specific contract by the State with complainant that the latter should, for the period of its existence, or for any time, have the unalterable right to have its rates regulated by the State as therein provided. This Act must be read as though the then constitutional provision reserving the State's right to alter or amend or repeal it was a part of it.

The matter of regulation, as between complainant and the public, of the sale by the former of the ap-

propriated public waters of the State, was a right so inherent in the sovereignty of the State that it might well be claimed (if it were here necessary to do so) that the Legislature under the Constitution had no power to pass an Act that would contract away from the State the right to such regulation.

In *Fallbrook Irrigation District* vs. *Bradley,* 164 U. S., 112, this Court, by reason of the scarcity of water and the great public necessity for irrigation in California, sustained to an extreme limit the power of the State to regulate irrigation therein. So that all this Court has decided and said with reference to the right of a State under its reserved constitutional power to reasonably alter and amend statutory, or other regulations of railroad rates and turnpike tolls, and as to exemptions from taxation and as to the regulation of the exercise by private or by quasi-public corporations of public utilities, apply with special force to this case.

In *Covington* vs. *Kentucky,* 173 U. S., 231, it appeared that the Legislature of Kentucky passed an Act, in 1886, authorizing the City of Covington to construct a system of water works with the provision that they "shall be and remain forever exempt from State, county and city tax."

At the time of the passage of that Act there was a general statute in force in Kentucky, passed in 1856, providing that "all charters and grants of or to cor-
" porations, or amendments thereof, and all other

"statutes, shall be subject to amendments or repeal "at the will of the Legislature, unless a contrary in- "tent be therein plainly expressed."

In 1891 the State of Kentucky adopted a new Constitution requiring all such property as the water works of the City of Covington to be taxed.

Under the Act of 1886 the City of Covington bought lands, built reservoirs, laid pipes and completed a system of water works, and invested a large amount of money under the provisions of the Act.

In 1895, certain lands acquired by the city, under the Act of 1886, constituting a part of its water works, were assessed for State and county taxes. The city refused to pay such taxes, claiming exemption under the Act of 1886, under which it had invested its money in construction, and claiming that the State had contracted with it by that Act not to tax its water works property.

In deciding the case this Court, through Mr. Justice Harlan, said: "The fundamental question in "the case, then, is whether, at the time of the adop- "tion of that Constitution, the City of Covington had, "in respect of the lands in question, any contract "with the State, the obligation of which could not "be impaired by any subsequent statute or by the "present Constitution of Kentucky, adopted in 1891. "If the exemption found in the Act of 1886 was such "a contract, then it could not be affected by that

" Constitution any more than by a legislative enact-
" ment.

"We are of the opinion that the exemption from
" taxation embodied in that Act did not *'tie the*
" *hands'* of the Commonwealth of Kentucky so that
" it could not, by legislation, *withdraw such exemp-*
" *tion* and subject the property in question to taxa-
" tion. The Act of 1886 was passed subject to the
" provision in the general statute of Kentucky above
" referred to, that all statutes 'shall be subject to
" 'amendment or repeal at the will of the Legislature
" 'unless a contrary intent be therein plainly ex-
" 'pressed.' If that Act in any sense constituted a
" contract between the City and the Commonwealth,
" the reservation in an existing general statute of the
" right to amend or repeal it, was itself a part of that
" contract. *Griffith* vs. *Kentucky Ins. Co.,* 3 Bush.
" 592.

"The City accepted the Act of 1886, and acquired
" under it the property taxed subject to that reserva-
" tion. There was in that Act no *'plainly expressed'*
" *intent never to amend or to repeal it.* It is true that
" the Legislature said that the reservoirs, machinery,
" pipes, mains and appurtenances, with the land upon
" which they were situated, should be forever exempt
" from State, county and city taxes. But such pro-
" vision falls far short of a plain expression by the
" Legislature that at no time would it exercise the
" reserved power of amending or repealing the Act

"under which the property was acquired. The ut-
"most that can be said is that it may be inferred, by
"the terms in which the exemption was declared,
"that the Legislature had no purpose at the time the
"Act of 1886 was passed to withdraw the exemption
"from taxation; *not that the power reserved would*
"never be exerted, so far as taxation was concerned,
"if in the judgment of the Legislature the public in-
"terests required that to be done. The power ex-
"pressly reserved to amend or repeal a statute should
"not be frittered away by any construction of subse-
"quent statutes based upon mere inferences." (p.
238.) (*Italics ours.*)

In *Peik* vs. *Chicago & Northwestern Railway Company*, 94 U. S., 164, the Railroad Company, by its charter was authorized "to demand and receive
"such sum or sums of money for the transportation
"of persons and property and for storage of prop-
"erty as it shall deem reasonable."

The Constitution of Wisconsin in force when the charters were granted provided: "That all acts for
"the creation of corporations within the State 'may
"'be altered or repealed by the Legislature at any
"'time after their passage.'"

Under this power reserved to the State in its Constitution, it was held that the Legislature had power to prescribe a maximum of charges to be made by said company for transporting persons or property within the State.

Shields vs. *Ohio*. 95 U. S., 319, was another case in which this Court held that the Legislature of Ohio had a right, under the power reserved in the Constitution of that State, to alter a statute allowing a railroad company to charge such tolls as it might deem reasonable. Such alteration consisted in providing that the railroad could not charge exceeding three cents per mile for carrying passengers more than eight miles, Mr. Justice Swayne saying: "It is urged "that the franchise here in question was property "held by a vested right, and that its sanctity, as such, "could not thus be invaded. The answer is *concensus "facit jus*. It was according to the agreement of the "parties. *The company took the franchise subject "expressly to the power of alteration or repeal by "the General Assembly*. There is, therefore, no "ground for just complaint against the State." (p. 324.) (*Italics ours.*)

In *Spring Valley Water Works* vs. *Schottler,* 110 U. S., 347. it was decided that. under the reserved power contained in Article IV, Section 31. of the Constitution of California, adopted in 1849, the people, in the new Constitution of 1879, had the right to change the manner provided by the Act of 1858 of appointing the Board of Commissioners whose duty it was to fix the water rates as between the Water Company and the City of San Francisco, and it was said by Mr. Chief Justice Waite: "The Con- "stitution of California adopted in 1849 *prohibited*

"*one Legislature from bargaining away the power* "*of succeeding Legislatures to control the adminis-* "*tration of affairs of a private corporation formed* "*under the laws of the State.* Of this legislative dis- "ability the Spring Valley Water Company had no- "tice when it accepted the privileges of the Act of "1858, and it cannot be presumed to have built its "works and expended its moneys in the hope that "neither a succeeding Legislature, nor the people in "their collective capacity when forming the Consti- "tution, would ever deem it expedient to return to "the old mode of fixing rates, rather than to any want "of power to do so if found desirable." (p. 355.) (*Italics ours.*)

While it is true that this case is not one involving a change of rate, nevertheless it decides the principle we contend for. When this case, last cited, was decided by the Supreme Court of California (61 Cal., 3), that Court said as to the rights of the State under its power reserved in the Constitution of 1849: "The water which it (the Water Company) is en- "gaged as a business in selling to the public is re- "garded and protected by law as its property; but, "as property, *which has been devoted to the use of* "*the public, it is subject to the regulation and con-* "*trol of the State;* and the State, while it has sanc- "tioned the use, has a duty to discharge to the public "by regulating the use, as well as the powers and "privileges of the corporation incidental to the use.

"These things *are not of the contract;* they appertain "to the sovereignty of the State, and *cannot be bar-* "*gained away.*" (*Italics ours.*) (p. 8.)

In *Georgia Railroad & Banking Co.* vs. *Smith,* 128 U. S. 174, the State statute incorporating the Railroad Company gave the exclusive right for a railroad between certain places, and also provided that the charge of transportation should not exceed 50 cents per 100 pounds on heavy articles, and 10 cents per cubic foot on articles of measurement for every 100 miles, and 5 cents per mile for every passenger. It was claimed by the Railroad Company that such provisions as to rates constituted a grant of right to charge the same, and that such grant was an unalterable contract between it and the State of Georgia. Said statute was enacted in 1835. The constitution of Georgia of 1877, vested in the General Assembly of that State the power to regulate "Railroad freights and passenger tariffs" so as to prevent unjust discriminations and require reasonable and just rates.

In 1879, an act was passed by the Legislature appointing Railroad Commissioners, and authorizing them to prescribe the rates of fare for the carriage of persons and merchandise to be charged by railroads within the State. This Commission prescribed certain rates less than those claimed by the Railroad Company under said Act of 1835. This Court decided that the State could so alter the rates and fares

to be charged by the Railroad Company, Mr. Justice Field, who delivered the opinion of the Court, saying with reference to this statute:

"*It contains no stipulation, nor is any implied, as "to any future action of the Legislature.* If the ex- "clusive right remain undisturbed, there could be no "just ground of complaint that other limitations than "those expressed are placed upon the charges autho- "rized. It would require much clearer language "than this to justify us in holding that, notwith- "standing any altered conditions of the country in "the future, the Legislature had, in 1833, contracted, "that the Company might, for all time, charge rates "for transportation of persons and property over its "line up to the limits there designated." (p, 181,) (*Italics ours,*)

In *Hamilton Gas Light Company* vs. *Hamilton City,* 146 U. S. 258, it was said by Mr. Justice Harlan, delivering the opinion of the Court,

"The legislative grant to a corporation of special "privileges, if not forbidden by the constitution, may "be a contract; but where one of the conditions of the "grant is that the Legislature may alter or revoke it, "the law altering or revoking, or changes the effect "to alter or revoke, the exclusive character of such "privileges, cannot be regarded as one impairing the "obligation of the contract, whatever may be the mo- "tive of the Legislature, or however harshly such

"Legislature may operate, in the particular case, up-
"on the corporation or parties affected by it. *The*
"corporation, by accepting the grant subject to the
"legislative power so reserved by the constitution,
"must be held to have assented to such reservation."
(*Italics ours.*) (p. 270.)

In *Reagan* vs. *Mercantile Trust Co.*, 154 U. S., at page 417, Mr. Justice Brewer, delivering the opinion of the Court, says: "We are of opinion that the "Texas & Pacific Railway Company is, as to busi-
"ness done wholly within the State, subject to the "control of the State in all *matters of taxation, rates,*
"and other police regulations." (*Italics ours.*)

In *Covington & Lexington Turnpike Road Co.* vs. *Sanford*, 164 U. S. 578, it was provided by the State statute incorporating the original turnpike company in 1834, that the Legislature could reduce the tolls so that the Company should earn on the amount expended upon the road and repairs not more than 14 per cent. per annum. Subsequently, by the statute of 1851, two new corporations were formed out of the original one, and the act incorporating them provided that each of the new companies was to possess and retain. "All the powers, rights and capacities "in severalty granted by the act of incorporation and "the amendments thereto to the original company."

In 1865 and in 1890, statutes were passed largely reducing the tolls collected by one of these com-

panies. This Court decided that, notwithstanding the provisions of the Act of 1851, the exemptions and privileges as to tolls under the Act of 1834, did not extend to the two new companies, saying: "In a "recent case, *Norfolk & Western Railroad* vs. "*Pendleton.* 156 U. S. 667, 673, we had occasion "to say, in harmony with repeated decisions, that 'in "'the absence of express statutory direction, or an "'equivalent implication by necessary construction, "'provisions, in restriction of the right of the State to "'tax the property or to regulate the affairs of its cor- "'porations, do not pass to new corporations, succeed- "'ing, by consolidation or by purchase under foreclos- "'ure, to the property and ordinary franchises of the "'first grantee'; and that this was a 'salutary rule of "'interpretation, founded upon obvious public policy, "'which regards such exemptions as in derogation of "'the sovereign authority and of common right, and "'therefore not to be extended beyond the exact and "'express requirements of the grant construed *stricti-* "*'simi juris. Morgan* vs. *Louisiana,* 93 U. S. 217; "*'Wilson* vs. *Gaines,* 103 U. S., 217; *Chesepeake &* "*'Ohio Railway* vs. *Miller,* 114 U. S., 176.' The "same principles should be recognized when the "claim of immunity or exemption from legislative "control of tolls to be exacted by a corporation es- "tablished by authority of law for the construction "of a public highway. *It is of the highest import-* "*ance that such control should remain with the State*

" *and it should never be implied that the Legislature* " *had intended to surrender it. Such an intention is* " *not to be imputed to the Legislature if it be possible* " *to avoid doing so by any reasonable interpretation* " *of its statutes. It is as vital that the State should* " *retain its control of tolls upon public highways as it* " *is that it should not surrender or fetter its power of* " *taxation.* * * * It is settled law that in grants " by the public *nothing passes merely by implication;* " and if a contract with a State, relating to the exer- " cise of franchises, is susceptible of two meanings, " 'the one restricting and the other extending the " 'powers of a corporation, that construction is to be " 'adopted which works the least harm to the State.' " The *Binghampton Bridges,* 3 Wall., 51, 75; *Rug-* " *gles* vs. *Illinois,* 108 U. S. 526; *Stein* vs. *Bienville* " *Water Supply Co.,* 141 U. S. 67, 80, 81." (*Italics ours.*) (pp. 587-8.)

When the Act of 1834, referred to in the foregoing case was passed, there was not, it appears, any provision in the then constitution of the State of Kentucky reserving the power to alter and repeal charters of corporations or statutes relating thereto, and consequently what was said by the Court in that case in the absence of any constitutional reservation is a strong statement of the principle involved in the case at bar where there was such constitutional reservation.

In *Sioux City Street Railway Co.* vs. *Sioux City,*

138 U. S. 98, the facts were that, on December 12th, 1883. the City of Sioux City, in the State of Iowa, by ordinance, conferred on the Street Railway Co., incorporated December 6th, 1883, under the general laws of said State, the right of operating a street railway, with the requirements that it should pave the street between the rails. Subsequently, under an Act of 1884, the City, by ordinance, required the Company also to pave the street for one foot outside of the rails, and assessed a special tax against it for the paving outside of the rails. Under Section 1090 of the Code of Iowa, which was in force when the Company was incorporated, its franchise was subject to such conditions as the Legislature should thereafter impose as necessary for the public good. It was held by this Court that there was no contract between the Company and the State or the City, the obligation of which was impaired by the burden of the additional paving, Mr. Justice Blatchford delivering the opinion of the Court, saying: *"No question can arise "as to the impairment of the obligation of a contract, "when the company accepted all of its corporate "powers subject to the reserve power of the State to "modify its charter and to impose additional bur-"dens upon the enjoyment of its franchise."* (p. 106.) (*Italics ours.*)

In addition to the foregoing, the following cases also support our contention:

Morris & Essex R. R. Co. vs. *Comrs.*, 37 N. J., 228.

O'Phinney vs. *Trustees*, 42 At. R., 59 (Md.)

Ex parte Kockler, 22 Fed., 529.

St. Louis & S. F. Ry. Co. vs. *Gill*, 54 Ark., 101.

Railway Co. vs. *Ryan*, 56 Ark., 245.

Griffin vs. *Kentucky I. Co.*, 3 Bush, 592.

Watson, etc., vs. *County Court, etc.*, 45 L. R. A., 675 (Mo.)

Gas & Water Co. vs. *Corpn. of Dowington*, 175 Pa. St., 341.

DECISIONS RELIED ON BY COMPLAINANT.

As we have not, as yet, seen complainant's brief to be filed in this case, we can here refer only to such decisions as it relied on in the Circuit Court. An examination of those decisions will show them clearly distinguishable from those relied upon by us in the essential particulars that, in all of them the properties or rights protected by the courts from impairment, alteration or destruction were held either under grants in fee or under statutes or ordinances amounting to specific contracts, or that it was sought to take private property without compensation.

As *Detroit* vs. *Detroit Citizens' St. Ry. Co.*, 184 U. S., 368, decided since the trial of this case, will doubtless be cited by complainant, we direct atten-

tion to the fact that the ground of this Court's decision there was the fact that the City Council had authority to and did enter *into a specific agreement* with the street railway.

In *Detroit* vs. *Detroit, etc., P. R. Co.,* 43 Mich., 140, the State attempted to take away the franchise of collecting tolls on two miles of the company's road, and this was held to amount to confiscation of said two miles of the company's road and property.

In *Com'rs* vs. *Green & B. R. N. Co.,* 79 Ky., 73, the corporation had an express contract with the State for the improvement of certain rivers, and it had expended large sums of money under the contract. The corporation had also leased the rivers from the State for thirty years. It was decided that such contract and lease could not be cancelled by the State by subsequent legislation without compensation.

In *Miller* vs. *New York & Erie R. R. Co.,* 21 Barb., 513, the point decided was that, the State could not, without making compensation therefor, compel the railroad company, at its own expense, to build a highway over and across private lands belonging to the company.

Commonwealth vs. *Essex Co.,* 13 Gray, 239, is to the same effect as to burdensome regulations regarding fishways.

In *Re Parrott,* 1 Fed. Rep., 481, the only point decided was that a statute prohibiting corporations from employing Chinese was an unreasonable and,

therefore, a void amendment to the general incorporation law of California.

In *People* vs. *O'Brien,* 111 N. Y., 1, it was decided that, although the State might dissolve the corporation, yet it could not, upon such dissolution, arbitrarily and without making compensation, take away from it and its creditors and vest in the State or its donees certain of its franchises and properties that survived such dissolution.

The case of *Ball* vs. *Rutland R. Co.,* 93 Fed. Rep., 513, is apparently greatly relied on by complainant. It there appears that the State of Vermont had granted to the predecessor of the defendant company "the right to receive and collect tolls or compensa- "tion at such rates as the directors may from time to "time prescribe and establish, for the conveyance "and transportation of all passengers and freight "over their road, or any part thereof, 'which the "Supreme Court may alter,' for a term of not ex- "ceeding ten years at any one time, as said Court "may judge reasonable, and in such manner that the "income of said company shall not be reduced below "twelve per cent per annum on the amount of the "capital stock, after deducting all expenses." The road was built 119 miles long under this charter, which was perpetual, *and not made subject to amendment or repeal.* The road was twice mortgaged and was operated for years under the charter. Afterwards the road passed into the hands of the defend-

ant, Rutland Railroad Company. The Circuit Court decided only that the law under which the charter was granted would apply to the defendants in the same manner as to their predecessor.

The Court did not even go so far as to hold that, where no reservation of amendment or repeal existed as to the charter, the State would not have the sovereign right to fix and regulate rates of charges so that they might be reasonable and just.

The Court says (page 516): "Question is also "made whether this franchise for taking tolls and "fares has passed to the Rutland Railroad Com- "pany, and is so held now as not to be subject to leg- "islation. It was the most important corporate right "from the beginning; was covered by the mortgages, "the first of which went into preferred stock, such "as is held by the orators; and was a part of what the "Act of Incorporation of the Rutland Railroad "Company (Section 7) authorized it to obtain, and "of which, pursuant thereto, took conveyance. The "Act was, by Section 12, made subject to the action "of any future legislation to amend, alter or repeal, "as the public good might require; and this provi- "sion is much relied upon as authorizing this leg- "lation. *But this franchise existed before that Act,* "and if the whole Act should be repealed, the fran- "chise would remain, as the road itself would, and "belong to the orators and others, where the repeal

"of the Act would leave it; and it would be as much "outside of impairment as before. If this were not "so, the Rutland Railroad Company would still have "the right to operate its road and to take reasonable "fares and tolls for profit; and while the Legisla- "ture has the *right to regulate,* and within proper "bounds to limit them, it does not appear to have the "right to destroy or take away such reasonable "profits as may be earned by the corporation for the "benefit of its stockholders." (Citing *Chicago M. & St. P. Ry. Co.* vs. *Minnesota,* 134 U. S., 418; *Reagan* vs. *Trust Co.,* 154 U. S., 362; and *Smyth* vs. *Ames,* 169 U. S., 466.) (*Italics ours.*)

The charter of the predecessor of defendant in that case provided that "the income of the company shall "not be reduced below twelve per cent per annum "on the amount of its capital stock, after deducting "all expenses," and *there was no reservation in the constitution, general laws or the charter of the original company, at the time of its incorporation, of the power in the State to amend or repeal.* The case does not intimate that, had such reservation existed, the State by proper legislation would not have had the right to fix and regulate the rates of charges so that the income of the company might have been reduced below twelve per cent upon the amount of its capital stock; in fact, the inference is that such action by the State would have been legal and constitutional.

The cases of *Orr* vs. *Bracken Co.*, 81 Ky., 593, and *Ohio* vs. *Neff*, 52 Ohio State, 375, simply decided that the reservation, in the charter of a private corporation, of the right of amendment, "does not con- "fer the *power to take away from the corporators* "*the control of the corporate property,* or change "the object of the charter by taking from those hav- "ing a right to select their officers under the charter, "that right, and placing it in the hands of those "whose stock, by reason of the increased power con- "ferred by the amendment, are enabled to control "the corporation." (*Orr* vs. *Bracken Co.*, p. 596.)

Lathrop vs. *Stedman.* Federal case No. 8519, simply reiterates the doctrine, not disputed by us, that the power of the Legislature, as the Court there says, "is not unlimited, for the private rights of persons "are not subject to an unjust and despotic exercise "of power by a Legislature, without means of re- "dress."

Hill vs. *R. R. Co.*, 41 Fed. Rep., 610, decides that "the Legislature had no power to amend the char- "ter of a railroad company so as to direct that the "proceeds arising from the lease or sale of the road "shall, after paying the corporate debts, be applied "in payment of municipal bonds given in exchange "for corporate stock issued to the municipality." We do not perceive the application of this case to the question here, since its decision is simply to the effect

that the Legislature cannot usurp the functions of a court in winding up the affairs of the corporation.

Johnson vs. *Goodyear Mining Co.*, 127 Cal., 4, decided only that the Legislature of California could not, under the reserved power to amend the charters of corporations, enact a grossly discriminating statute giving laborers of corporations certain liens on the corporate property, such liens not being applicable to the property of persons not corporations.

In *Lake Shore, etc., Ry. Co.* vs. *Smith*, 173 U. S., 684, the only point decided by this Court was that, the power of a State to fix maximum rates and charges for the transportation of persons and property by railroad companies did not include the power to fix a rate so as *to discriminate and make an exception in favor of a certain class of persons* and give to them a right of transportation for a less sum than the general rate provided by law. (p. 690.)

It thus appears from an examination and critical comparison of the decisions of the courts upon this subject that, wherever the State had reserved the power to alter, amend or repeal the charter of a corporation, exercising public uses, or the laws under which it was incorporated, it has the right to subsequently regulate in a reasonable manner its charges to the public for services rendered, and that such reserved right of regulation and alteration will never be held to have been impliedly surrendered by the State under such a statute as this Act of 1862, which

contains no provision that could by any possibility be so construed. It may be stated here that complainant's bill of complaint, filed September 29, 1896 (Rec., 9), alleged that it was entitled to have the Supervisors fix the rate so that it would get a reasonable return "upon the value of its canals, etc., "and property actually used and useful in the ap- "propriation and furnishing of water." (Rec., 4, 5, 6.)

This was a clear recognition of the Act of 1885, and it was not until June 8, 1899, nearly three years after the commencement of the suit (Rec., 33, 35, 52), that complainant shifted its position by amending its bill, setting up its alleged unalterable contract as to rates and basis of valuation under the Act of 1862. In short, complainant, for the twenty-eight years following its incorporation, never realized or claimed that it had any such contract under the Act of 1862. As complainant, by the allegations of its bill, had never sought to enforce the rates under the Act of 1862, which were to net it not less than eighteen per cent per annum, and as its average income, even on its own inflated valuation, was about two per cent per annum only (Rec., 4), the Circuit Judge held, in his opinion, that it had never accepted or reduced to possession the grant of rates by the Act of 1862 (Rec., 51). While such appears to have been the opinion of the learned Judge of the Circuit Court as to the *rates* under the Act of 1862, never-

theless it is clear from his opinion that he upheld that Act as constituting a contract with complainant unalterable by the State, in so far as it provided that, the capital invested in the works was *the main thing and basis to be considered in arriving at a valuation of such works.* The learned Judge appears to have arrived at this conclusion because of the mistaken idea that, under the Act of 1885, the Supervisors have no authority to consider the cost of the works in fixing their value (Rec., 42, 43, 44, 45, 46, 47, 48).

3. UNDER THE ACT OF 1885, THE COST OF COMPLAINANT'S WORKS COULD BE CONSIDERED BY THE SUPERVISORS IN DETERMINING THEIR VALUE, AND THE PROVISIONS OF THAT ACT AS TO THE RATES AND BASIS OF VALUATION ARE FAIR AND REASONABLE, AND HAVE BEEN SUSTAINED BY THIS COURT.

Section 5 of that Act provides that "Said Boards "of Supervisors in fixing such rates shall, as near as "may be, so adjust them that the net annual receipts "and profits thereof to the said persons, companies, "associations and corporations so furnishing such "water to such inhabitants shall not be less than six "nor more than eighteen per cent upon the said "value of the canals, ditches, flumes, chutes, and all "other property actually used and useful to the ap- "propriation and furnishing of such water of each "of such persons, companies, associations and cor- "porations; but in estimating such net receipts and

" profits, the cost of any extensions, enlargements, or " other permanent improvements of such water " rights or water works shall not be included as part " of the said expenses of management, repairs and " operating of such works, but when accomplished, " may and shall be included in the present cost and " cash value of such work. In fixing said rates, " within the limits aforesaid, at which water shall " be so furnished as to each of such persons, com- " panies, associations and corporations, each of said " Boards of Supervisors *may likewise take into esti-* " *mation any and all other facts, circumstances and* " *conditions pertinent thereto, to the end and purpose* " *that said rates shall be equal, reasonable and just,* " *both to such persons, companies, associations and* " *corporations, and to said inhabitants.*" (*Italics ours.*)

It is clear under these provisions that, the Supervisors may take into consideration the cost of the works as an element in arriving at their value.

The Act of 1885 was before this Court in the cases of *Osborne* vs. *San Diego Co.,* 178 U. S., p. 39, and *San Diego L. & T. Co.* vs. *Jasper,* 189 U. S., p. 441, and in each, its provisions, both as to rates and as to basis of valuation, was approved by the Court. It is thoroughly settled by this Court by its decisions in the two cases last mentioned, and also in *Smyth* vs. *Ames,* 169 U. S., pp. 544, 546, that while the cost of

the works is an element to be considered, yet that, it is not, as was held by the Circuit Court in this case, the basis or chief element to be considered. According to the decisions, *the value of the property used and useful and the service rendered constitute the basis of valuation in arriving at the rates,* and this is also the rule announced by the Supreme Court of California in *San Diego W. Co.* vs. *San Diego,* 112 Cal., 556, and in *Redlands L. & C. D. Water Co.* vs. *Redlands,* 121 Cal., 212, as to this Act of 1885.

In *San Diego L. & T. Co.* vs. *Jasper, supra,* this Court said (p. 442): "The main object of attack is "the valuation of the plant. It no longer is open to "dispute that under the Constitution 'what the com-"'pany is entitled to demand, in order that it may "'have just compensation, is a fair return upon the "'reasonable value of the property at the time it is "'being used for the public.' *San Diego Land & "Town Co.* vs. *National City,* 174 U. S., 739, 757. "That is decided, and is decided *as against the con-"tention that you are to take the actual cost of the "plant, annual depreciation, etc.,* and to allow a fair "profit on that footing over and above expenses. We "see no reason to doubt that the California statute "means the same thing." (*Italics ours.*)

III.

THE CIRCUIT COURT ERRED IN DECIDING THAT THE BOARD OF SUPERVISORS, IN ARRIVING AT THE VALUE OF COMPLAINANT'S WORKS, DID NOT CONSIDER THEIR COST, SINCE THERE IS NO EVIDENCE WHATEVER IN THIS RECORD THAT IT DID NOT CONSIDER SUCH COST. ON THE CONTRARY, THE EVIDENCE SHOWS THAT THE BOARD MUST HAVE CONSIDERED SUCH COST.

The Judge of the Circuit Court in his opinion, after apparently holding that the cost of complainant's works was the chief element that should have been considered by the Board of Supervisors in fixing the valuation of such works, also expressly stated that the evidence showed that the Board had not, in such matter, considered the cost of the works (Rec., 47, 48, 49, 50). We assert most positively that there was not a particle of evidence introduced on the trial in the Circuit Court supporting this drastic and important statement by the learned Judge. When the fixing of these rates was before the Board of Supervisors for its determination in June, 1896, the petitioning taxpayers were represented by Mr. L. W. Fulkerth and Mr. C. A. Stonesifer, as their counsel, and the complainant by Mr. Garret W. McEnerney, as its counsel, and the following proceedings were had as appears from page 186 to page 247 of the record on this appeal and by stipulations at pages 457, 459 and 460 of the record.

Petitioners introduced in evidence the report of the expert Civil Engineers R. H. Goodwin and E. D. Grove. Goodwin was sworn as a witness and examined and cross-examined most exhaustively with regard to this report. The substance of this report and of Goodwin's testimony was that, the cost of reproducing complainant's works in June, 1896, would be $312,358.00, but that the then cash value was only $251,000.00 (Rec., 188, 189). The expert testified that the reason of this difference was "because "the canal is not in the shape that it would be if it "was built at the present time, on account of the de- "preciation of the lumber and the silting. The canal "is filled up in many places with silt, and that would "have to be taken out, to come to, to meet the orig- "inal lines and the first value" (Rec., 190). This witness, although subjected to a severe cross-examination by counsel for complainant, fully sustained his report and valuation of complainant's works at the sum of $251,000.00. The witness also fully supported his estimate of $13,250 as the annual expense of maintenance and operating the works. The testimony of Goodwin was corroborated by the other expert, E. D. Grove (Rec., 233). The affidavits of Civil Engineers S. F. Taylor, J. H. Bates and George W. Dougherty as to prices of labor and supplies were introduced in evidence by petitioners. They also introduced certified copies of the assessments of complainant's property in Fresno and Mer-

ced counties (Rec., 240). By the stipulation at page 457 of the Record it appears that complainant introduced evidence before the Supervisors "tending " to show the matters tabulated in complainant's Ex- " hibit 2 as modified by Exhibit 12."

Exhibit 2 purports to set forth the original cost of complainant's works, including cost of maintenance, and Exhibit 12 purports to set forth such original cost, less the cost of maintenance (Rec., 145, 401, 445). This was all the testimony, as appears from the record, before the Supervisors. Complainant's showing before that Board consisted solely of statements from its books, going to show the original cost of constructing its works. That character of evidence introduced by it before that Board was presumably no stronger than that of its witness Merritt testifying from the books, as to such cost only, on the trial of this case, and which alleged proofs will be hereinafter more fully commented on. At all events, we see that the petitioners at this hearing before the Supervisors put in evidence, not only as to cost of reproduction, but also as to the then value and as to the expense of maintenance, and that complainant, on the other hand, *relied solely on the alleged original cost of its works,* and insisted that such cost was the value and basis upon which the rates should be fixed. Complainant did not, at that hearing, introduce a single witness or any evidence to contradict the report of said civil engineers or the testi-

mony of Goodwin and Grove in support of their report, nor did it show that the experts' sworn testimony as to the depreciation of the works and as to the filling up of the canal was in any degree untrue, nor did it introduce any evidence that might in any degree have assisted the Supervisors in arriving at the then value of its works, nor did it introduce any evidence to show that its right to appropriate water was of any value, although it alleged in its bill of complaint that the Supervisors had refused to consider the value of such right (Rec., 6.)

It may be here stated that complainant on the trial in the Circuit Court *expressly abandoned the point that its right to appropriate water had a value* (Rec., 303, 304). It was decided by this Court in *San Diego Land Co.* vs. *National City,* 174 U. S., p. 758, that there was no authority for including the value of such water right in the valuation of water works for the purpose of fixing rates. The Board of Supervisors after hearing the foregoing evidence made its order reciting that, after hearing and considering the evidence introduced by petitioners and complainant, it fixed the value of complainant's works at $337,000.00 and its reasonable annual expense of maintenance and operation at $22,000.00 (Rec., 399, 400). It will thus be seen that the *Board accepted neither of the valuations insisted upon before it by the parties respectively;* that it fixed the value at $86,000.00 more than petitioners contended for, and

allowed $8,750.00 more per annum for expenses of maintenance and operation than they contended for. Where is there, we ask, in all this, any evidence whatever that the Supervisors did not consider the cost of complainant's works, or that they acted arbitrarily as charged in the bill? (Rec., 6). On the contrary, the order made shows conclusively that, they must have considered such cost, since the estimates of the expert civil engineers introduced by the petitioners against complainant were so materially raised by the Board's order. Whether this Board was sitting and fixing this valuation in a legislative or judicial capacity is immaterial. It certainly had authority of law to hear and determine this question, and we say that it was no more bound than is a regular Court to specify, in giving its judgment, what evidence it did or did not consider in making up its judgment. If it arrived at a reasonable valuation, the method it may have pursued in making up its decision is immaterial, unless it was guilty of fraud, and no fraud is alleged or proven.

Under the facts here, there can arise not the slightest presumption even, that it did not consider and give due weight to all the evidence before it, including that as to cost of the works as well as that showing their depreciation in value.

In *Spring Valley Water Works Co.* vs. *Schlotter,* 110 U. S., 347, it was said with reference to the action of Boards of Supervisors fixing water rates:

"Like every other tribunal established by the Legis-
"lature for such a purpose, their duties are judicial
"in their nature, and they are bound in morals and
"in law to exercise an honest judgment as to all mat-
"ters submitted for their judicial determination. *It*
"is not to be presumed that they will act otherwise
"than according to this ruling" (p. 354). (*Italics ours.*)

As to complainant's claim that the depreciation of its works should have been included in their cost and valuation, this Court has held directly to the contrary in *San Diego L. & T. Co.* vs. *Jasper,* 189 U. S., p. 446, affirming the ruling on this point in *Redlands L. & C. D. W. Co.* vs. *Redlands,* 121 Cal., 312, 313. Depreciation is covered by the allowance for maintenance.

IV.

COMPLAINANT DID NOT SHOW ON THE TRIAL BY COMPETENT OR SATISFACTORY EVIDENCE THAT THE COST OF ITS WORKS WAS $798,429, AS ALLEGED IN ITS EXHIBIT 12.

For the purpose of proving the cost of its works, complainant caused to be made up from its books of account Exhibit 2, which included the cost of maintenance, and then Exhibit 12, which it claimed excluded the cost of maintenance (Rec., 145, 401, 445). Exhibit 12 is manifestly the only one to be con-

sidered. Prior to the incorporation of complainant in 1871, there appears to have existed complainant's predecessor, the San Joaquin and Kings River Canal Company. (Complainant has same name with word "Irrigation" added.)

As a basis of Exhibits 2 and 12, complainant introduced in evidence the books of account of the San Joaquin & Kings River Canal Company (complainant's predecessor) and also those of complainant. The introduction of these books was objected to by defendants on the grounds that there was no proof that they "contained a true statement of all items of " expense or the items of construction of the original " canal, or that in any respect they are true and cor- " rect and properly kept, *and on the further ground " that they are incompetent*" (Rec., 55-56).

These books were offered in evidence when Mr. Merritt, complainant's secretary, was being examined by complainant as its witness.

As to the books of account of complainant's predecessor, no evidence was offered in support of them to prove that a dollar *had been actually expended* by that company in construction or for any purpose.

It appears from Exhibit 12 that complainant claims to have bought out its predecessor by paying it $119,335.29 as the alleged cost of its works, and by paying John Bensley in complainant's stock, valued at $112,500.00, in all $231,835.29.

There is no competent evidence in the record as

to the actual cost to this former company of its works or of the value of the alleged water right purchased from Bensley, and even if there was such evidence, it has been expressly held by this Court that what was paid by a company to its predecessor for property, or for property purchased at foreclosure sale or on reorganization, is not satisfactory evidence of the original cost.

Dow vs. *Beidelman,* 125 U. S., p. 680.

Accordingly, $231,835.29 is eliminated from the $798,429.61 claimed in Exhibit 12, leaving $566,-594.32 as the alleged cost.

There is no competent evidence, by receipts or otherwise, in support of the complainant's books of account *that it ever actually expended* this $566,-594.32 in construction of its works. The only witness as to these books of account and Exhibit 12 was Mr. Merritt, and he is not shown to have been connected with complainant in any capacity prior to July 1, 1883, when he became its secretary (Rec., 53).

It will be seen from Exhibit 12 that the canal was almost entirely constructed to and including the second parallel before that date, and that of said sum of $566,594.32 claimed to have been expended by complainant, at least the alleged cost amounting to $494,774.43 must be deducted, leaving but $72,-219.89 of alleged cost since Merritt became secretary

(Rec., 70, 71, 445, 446). It should be stated here that, the cost $85,877.82 of constructing the so-called "Outside canal," which did not reach Stanislaus County, is not to be considered, because that canal *was not begun until September, 1896,* whereas the rates complained of were fixed in June, 1896 (Rec., 84). Mr. Merritt testified only, that the books had been correctly kept, so far as he had kept them (Rec., 56), and that he did not know, except from the books, what had been spent for labor, materials, or for digging earthworks (Rec., 98). So there does not appear in this record any competent evidence showing the expenditure of even the remaining $72,219.89 of Exhibit 12.

The only other witnesses for complainant bearing on the cost of construction were the following:

F. L. Palmer, who testified that he was complainant's secretary from March 1, 1874, to June 30, 1883, and that he kept its accounts correctly. But that does not prove the expenditure of any money.

B. G. Chandos, testified that he had been complainant's superintendent for ten months from January 1, 1874, to November 1, 1874; and that he rendered monthly statements of his financial transactions for complainant.

R. M. Brereton, testified that he had been complainant's chief engineer for three months from October 15, 1874, to January 21, 1875, and had ren-

dered monthly statements of his financial transactions.

To the same effect was the testimony of George S. Hoffman, assistant superintendent, for twenty days, in December, 1877. The testimony of these last three witnesses covered a period of only thirteen months and twenty days, and none of them testified as to how much money be expended, or for what it had been expended, and their entire testimony does not prove the expenditure of any of the moneys embraced in Exhibit 12 (Rec., 303-4).

It also appeared from the minutes of a meeting of complainant's stockholders, held December 1, 1874, that it was admitted *there had been a loss of* $350,000.00 to the complainant, owing to the waste and bad management of Mr. Brereton, its chief engineer (Rec., 157). And at the stockholders' meeting of November 1, 1881, the president reported that, with careful management, "the canal will pay a fair revenue on what *it ought to have cost*" (Rec., 168).

WHAT COMPLAINANT'S STOCKHOLDERS PAID INTO THE COMPANY IS NOT SATISFACTORY EVIDENCE OF THE VALUE OF THE WORKS.

Complainant has 100,000 shares of stock, and it claims that its books show that $987,575.00 had been paid in by its stockholders, including the $112,500.00 in its stock, paid to John Bensley on purchase from its predecessor company (Rec., 62-63). There is no

competent evidence, by receipts or otherwise, showing such payments.

In the next place, what moneys stockholders may have paid into a corporation is not satisfactory proof of the value of the corporate property in this class of cases, as was decided in

Dow vs. *Beidelman,* 125 U. S., p. 680.

Furthermore, such evidence is especially unsatisfactory in this case, since it appeared that complainant engaged in farming operations on its own account and sustained large losses in the sum of $111,916.49 in that venture (Rec., 170). Such being the case, the moneys paid in by the stockholders could be no reliable criterion of the cost or value of the irrigation works. The burden of proving the cost of its works in a clear and satisfactory manner was upon complainant, and we submit that it wholly failed to do so, and furthermore that, even should the character of evidence submitted on this point by complainant be held to be sufficient, yet it can have but little weight in determining the value of its works, since a large portion of the alleged cost consisted of the alleged purchase price to its predecessor, and a large amount was lost in disastrous farming, and a large amount was wasted by the alleged extravagance of its engineers; so that the case, as to the cost of construction, comes within the language of this Court in *San Diego L. & T. Co.* vs. *Jasper,* 189 U.

S., 439, where it is said: "Yet the only evidence in "favor of a higher value in the present case is the "original cost of the works, seemingly inflated by "improper charges to that account, and by injudi- "cious expenditures (being the cost of another com- "pany, which sold out on foreclosure to appellant), "coupled with a recurrence to testimony as to the "rapid depreciation of the pipes. In this way, ap- "pellant makes the value over a million dollars. No "doubt the cost may be considered, and will have "more or less importance according to circum- "stances. In the present case it is evident for rea- "sons, some of which will appear in a moment, that "it has very little importance indeed" (p. 443).

Another important circumstance to be considered is that, when the main part of these irrigation works was constructed in the early 70's the prices of labor and materials were much higher in California than in June, 1896. This is most conclusively shown by the fact that the outside canal, whose construction was commenced in September, 1896, and which is 34.50 miles long (Map end of Record), cost $85,-877.82, or about $2,500.00 per mile (Rec., 84), whereas the alleged cost of extension A, being 29 miles of the main canal, completed in 1878, was $122,777.58, or about $4,233.00 per mile (Rec., 70, 98-99).

It appears from the testimony of Mr. Horace Wanzer, complainant's witness, that there is a total

of 310,000 acres of land under the canal—that is, irrigable therefrom (Rec., 102). Of this immense area only 37,311 acres were paying for water in 1896, when the Supervisors fixed the rates (Rec., 415). And yet, complainant claims that one-ninth of the lands under the canal should pay a profit on the entire cost of the whole canal. The same claim, under similar conditions, was made in *San Diego L. & T. Co.* vs. *Jasper,* 189 U. S., 439, and was denied by this Court, saying: "If a plant is built, as probably this "was, for a larger area than it finds itself able to "supply, or, apart from that, *if it does not as yet have "the customers contemplated,* neither justice nor the "Constitution requires that, say, two-thirds of the "contemplated number should pay a full return. "* * * The Statute of California no doubt was "contemplating the case of water works fully occu- "pied within the area which they intended to supply. "It hardly can have meant that a system constructed "for six thousand acres should have a full return "upon its value from five hundred, if those were all "that it supplied. At all events, we will not be the "first to say so. *If necessary to avoid that result, we "should assume that only a proportionate part of the "system was actually used and useful within the "meaning of the statute"* (p. 447). (*Italics ours.*)

V.

THE VALUATION BY THE SUPERVISORS OF COMPLAINANT'S WORKS AT $337,000.00 WAS FAIR AND REASONABLE.

We have already seen that the report of the expert civil engineers and the sworn testimony of Engineer Goodwin on the hearing before the Board of Supervisors fixed the cost of reproducing complainant's works at $312,358.00, and their value at $251,000.00, and the cost of maintenance per annum at $13,250.00, also that the Board raised such valuation to $337,000.00, and such cost of maintenance, including taxes, to $22,000.00 (Rec., 187, 459, 460).

We have also seen that complainant did not undertake in the slightest degree to assist the Board in determining either the then cost of reproducing its works or their then value, other than to introduce evidence tending to show their original cost. We think we have also made it clear that such alleged original cost is not the proper basis of valuation, and that it is, especially in this case, an improper basis under all the facts surrounding it.

We now say, as to the valuation made, that it was fair and reasonable. This appears, primarily, from the sworn and uncontradicted testimony of the expert civil engineers, Goodwin and Grove, showing that the value of the works was even less than the cost of their reproduction because of the deprecia-

tion of the lumber and of the filling up of the canal in many places with silt (Rec., 189, 190). The valuation by the Board is further sustained by the fact that, *the assessed value of the works for purposes of taxation in all the three counties did not exceed in any year* $170,000.00 for the years 1896, 1897 and 1898, nor the sum of $28,750.00 for value of the works in Stanislaus County (Rec., 111 to 116). Another corroboration of the Board's valuation is the value of complainant's stock, consisting of 100,000 shares. It appears in evidence that it sold in 1881 for $2.75 a share, and that after the water rates complained of had been fixed by the Supervisors, viz., in February, 1897, such stock sold for $4.00 a share (Rec., 168, 302).

A further strong corroboration of such valuation is the fact, already mentioned, that the cost of constructing the "outside canal" in 1897 and 1898 was about $2,500.00 per mile. The entire canal of 71 miles would at the same rate cost $177,500.00, and should we add $150,000.00—a more than liberal estimate—to cover dam, parallels and other works, the entire cost would be $327.500.00 Considering thus all the evidence bearing on the subject, we claim it to be clearly shown that the valuation by the Board of Supervisors of complainant's works in June, 1896, was fair and reasonable at the sum of $337,000.00. and that complainant, upon whom the burden of proof rested in the trial Court, has not

shown the contrary. but has relied solely upon the alleged original cost.

THE COST OF MAINTENANCE FIXED BY THE SUPERVISORS AT $20,000.00 PER ANNUM WAS REASONABLE.

It does not appear that complainant introduced before the Board of Supervisors any evidence whatever as to the cost of maintenance.

The petitioning taxpayers introduced the evidence of the experts who placed such cost at $13,250.00 (Rec., 188). and which the Supervisors raised to $20,000.00. On the trial in the Circuit Court, complainant put in a statement, Exhibit 3, of the alleged cost of maintaining its works for 1896-1897 and 1898, showing an average annual cost of $24,262.41. This evidence as to these years was clearly improper and could not show that the Supervisors *erred in June, 1896,* in fixing such cost at $20,000.00.

Defendants objected to the introduction of this statement on the ground that it was incompetent (Rec., 57, 402). No evidence was introduced to show the actual expenditure of any of the amounts shown by Exhibit 3. At page 146 of the Record appears complainant's alleged yearly cost of maintenance for nine years immediately preceding 1896, from which the average annual cost appears to be $22,045.16. It does not appear that this was in evidence before the Supervisors, nor were the alleged

expenditures proved on the trial, nor is there any substantial difference between such cost and the amount allowed by the Supervisors.

VI.

THE WATER RATES FIXED BY THE BOARD OF SUPERVISORS OF STANISLAUS COUNTY DID NOT, AND DO NOT, DEPRIVE COMPLAINANT OF ITS PROPERTY WITHOUT DUE PROCESS OF LAW. THE TOTAL NET INCOME THAT COMPLAINANT WAS ENTITLED TO RECEIVE IN ALL THREE COUNTIES AFTER THE FIXING OF THE RATES BY THE SUPERVISORS OF STANISLAUS COUNTY FOR THAT COUNTY, WAS GREATER BY $4,918.69 FOR 1897, AND BY $2,634.82 FOR 1898, THAN THE AVERAGE NET INCOME THERETOFORE RECEIVED BY IT, AND THE THEORY UPON WHICH THE CIRCUIT COURT DECIDED AGAINST THE RATES FIXED BY SAID SUPERVISORS CANNOT BE SUSTAINED.

In the first place, the Courts of the United States do not undertake in this class of cases to require that any given per cent or income shall be realized by a corporation whose rates are regulated by the State. In enforcing the constitutional prohibition against the deprivation of property without due process of law, this Court requires only that the rates shall be reasonable as between the corporation and the rate-payers, considering the use and value of the prop-

erty employed, the service rendered and the extent of territory actually under irrigation able to pay. That such is the extent and limitation of this Court's review of these rates is settled by its decisions in the following cases:

San Diego L. & T. Co. vs. *Jasper,* 189 U. S., pp. 446, 447.
San Diego L. Co. vs. *National City,* 174 U. S., pp. 775-6-7.
Smyth vs. *Ames,* 169 U. S., pp. 466, 546.

As was said by Mr. Justice Harlan in *San Diego Land Co.* vs. *National City, supra* (p. 754): "But "it should also be remembered that the judiciary "ought not to interfere with the collection of rates "established under legislative sanction unless they "are *so plainly and palpably unreasonable* as to "make their enforcement equivalent to the taking "of property for public use without such compensa- "tion as under all the circumstances is just both to "the owner and to the public." (*Italics ours.*)

Complainant alleges in its bill that, on the 1st day of January, 1896, and up to the fixing of the rates by the Board of Supervisors of Stanislaus County on June 26, 1896, it charged its customers in the counties of Fresno, Merced and Stanislaus for irrigating alfalfa, $2.50 per acre per annum, and for irrigating cereals, $2.00 per acre per annum. (As the other subjects of irrigation are comparatively of small ac-

count, we will, in our argument, refer only to the rates for alfalfa and for cereals.)

Complainant introduced statements from its books to show that under such rates, for the ten years immediately preceding the year 1897, its average annual gross receipts from irrigation in the three counties was $56,026.66; that its average annual cost of maintenance was $22,172.63, which would make its average annual net profit at the time the Supervisors fixed the rates in June, 1896, the sum of $33,854.03 (Rec., 145, 146).

Complainant's net annual income at that time therefore amounted to about 4¼ per cent upon $798,429.61, the alleged cost of its works as claimed in its Exhibit 12, and to about 10½ per cent on $337,000.00, the valuation of its works as fixed by the Supervisors.

The rates fixed by the Supervisors were, for alfalfa,, all perennial grasses and all cereals, $1.50 per acre per annum (Rec., 460), and such rates went into effect in Stanislaus County for the irrigation year of 1897, commencing July 1, 1896.

Now according to Exhibit 11, complainant's gross receipts in all three counties for the year 1897, after the rates fixed by the Supervisors of Stanislaus County had gone into effect *as to that county only,* were $55,760.00 (Rec., 429), and deducting therefrom the cost of maintenance for that year, viz., $19,940.87 (Rec., 402), we have $35,819.13, net income for the year 1897, or $1,965.10 more than the $33,-

854.03 annual average net income it had theretofore been receiving. So that, even on the collections that complainant claims it actually made for 1897, we cannot see how there can possibly be any ground for complaint. But the evidence shows that complainant did not collect more money for the year 1897 solely *because it voluntarily reduced its rates in many instances in the counties of Merced and Fresno,* and that, if it had charged for 1897, in those two counties, the rates it had therein charged in 1896, termed by it "its regular rates," its net income for 1897 would have been considerably more than it claims to have collected. This clearly appears from the evidence.

D. M. Rouse, complainant's superintendent, testified that after the Supervisors had reduced the rates in Stanislaus County, complainant itself reduced them of its own accord in Merced County (Sec. 122), and examination of Exhibit 11 for year 1897 will show that such voluntary reduction by complainant was also made in Fresno County (Rec., 421 to 427). What this reduction of 1897 amounted to is easily arrived at. On pages 429 and 430 of the Record appears an estimate by complainant of *what it would have received* in all three counties in 1897 *had it collected its "regular rate,"* and the total sum arrived at is $64,708.50. Now in this estimate are 5,764.75 acres of land in Stanislaus County, estimated at $2.50 per acre, or $14,411.87, and 440.25 acres of grain at $2.00 per acre, or $880.00; total, $15,292.37.

This, at the Stanislaus rate of $1.50 per acre, would amount to $9,307.50, or a difference of $5,984.87 from the so-called regular rate. Now, if this difference be deducted from the above $64,708.50, *we have $58,723.63 which complainant would have received for 1897 had it not voluntarily reduced its rates in the counties of Merced and Fresno.* By looking at the receipts for 1898, and making the same kind of deduction as to Stanislaus County, we see that complainant would have collected for that year $66,015.36 instead of $65,991.37, which it claims to have collected exclusive of the "outside canal" (Rec., 444).

We cannot possibly understand how complainant can claim that the rates fixed by the Board of Supervisors for Stanislaus County are so unfair and unreasonable as to deprive it of its property without due process of law, when, immediately following the fixing of such rates for that county, it of its own accord, reduced the rates in the other two counties. Now, if we deduct from the $58,723.63 the gross income it would have received for 1897 at the Supervisors' rates in Stanislaus County and at its "regular rates" in the other two counties, $19,940.87 its cost of maintenance for that year (Rec., 402), We have $38,772.72 net income, which is $4,918.69 more than the average annual net income it was receiving up to 1897, and which amounts to about 4 8/9 per cent per year on $798,429.00, the alleged cost of the

works, and to about 11 per cent on $337,000.00, the valuation by the Supervisors. On the same basis, complainant would have received for 1898, exclusive of "outside canal," $2,634.82 more than such average annual net income. But if complainant was, for any reason, justified (which we deny) in thus voluntarily reducing its rates in Merced and Fresno Counties, it yet appears from its own showing to have actually made a net profit in 1897 of $35,820.00 (Rec., 402, 429), and in 1898, exclusive of "outside canal," of $36,464.86 (Rec., 402, 444). It should be further noted that the expenses for 1898 were about $7,000.00 above the average, viz., $29,526.51 (Rec., 146, 402). These are larger profits than it was accustomed to make before the Stanislaus rates went into effect, and it is impossible to conceive how complainant can possibly maintain this bill upon any such showing.

On reaching this point, this Court will, we think, naturally say, well, if this is all so, by what process and upon what theory did the Circuit Court decide that the rates complained of were fixed by the Supervisors so low as to deprive complainant of any property whatever.

THE THEORY URGED BY COUNSEL AND ACCEPTED BY THE CIRCUIT COURT, AND UPON WHICH IT DECIDED THIS CASE, AND IN WHICH, WE CLAIM, IT CLEARLY ERRED, WAS THAT THE RATES FIXED BY THE SUPERVISORS OF STANISLAUS COUNTY MUST BE HELD VOID BECAUSE THEY MUST BE CONSIDERED BY THE COURT AS THOUGH FIXED TO OPERATE, NOT ONLY IN STANISLAUS COUNTY, BUT ALSO IN MERCED AND FRESNO COUNTIES, AND THAT, WHEN SO CONSIDERED, IT WAS CLAIMED THAT THE REVENUE THEREFROM IN ALL THREE COUNTIES WOULD BE UNREASONABLY REDUCED.

As argument upon and exemplification of its theory, complainant made in Exhibit 11, *estimates* which show that, upon such theory, its gross income for 1897 would be only $40,799.50 (Rec., 429, 430), and for 1898 only $54,238.24 (Rec., 444).

Now the Court will bear in mind, in the first place, that this was *mere theory* and *not a fact* in this case, for the rates fixed by the Supervisors of Stanislaus County only *were not, for the years 1897 and 1898, or at any time, put in operation in the two other counties by the Supervisors of those counties, nor have any rates ever been fixed by the Supervisors of either of those counties,* and we have furthermore already seen from Exhibit 11 that complainant, ever since the rates were fixed by the Supervisors of Stanislaus County in 1896, has charged and collected in the

two other counties rates fixed by itself, in most cases according to its so-called "regular rate" of $2.50 and $2.00 for alfalfa and cereals, and in some instances voluntarily reduced by it, as already pointed out. So that, *the revenue actually collected by complainant in those two other counties for 1897 and 1898* have, as we have seen, greatly exceeded what they would have collected had the Supervisors' rate of $1.50 in Stanislaus County been in actual operation in the two other counties. In short, *the rates fixed by the Supervisors for Stanislaus County alone, have never, as matter of fact or in law, been enforced or enforceable in the two other counties, and the contention of counsel rests solely upon supposition and theory.* That the Circuit Court accepted this theory and decided this case upon it, is shown by the opinion of the learned Judge of that Court as follows: "The dam-
" age to the complainant arises out of the fact that,
" but for this order of the Board of Supervisors of
" June 26, 1896, fixing the rate that complainant
" might charge for water supplied to consumers in
" Stanislaus County for irrigating alfalfa and peren-
" nial grasses and cereals, $1.50 per acre per annum,
" complainant would have continued to charge such
" consumers for irrigating alfalfa, $2.50 per acre per
" annum. The evidence shows that the rate fixed by
" the Board of Supervisors reduces the income of
" the company considerably below six per cent *upon*
" *the capital actually invested* in the property of the

" corporation, *and if a corresponding reduction were* " *made in Fresno and Merced counties, its income* " *would, under the most favorable conditions, be re-* " *duced to less than five per cent per annum on the* " *value of the property as estimated by the Board* " *of Supervisors.* Is this valuation of complainant's " property correct?" (Rec., 48). (*Italics ours.*)

That the Circuit Court must have decided the case solely upon the theory in question is undeniable, when we refer to the figures as to net receipts for 1897 and 1898, already given, and which show that such actual net receipts were even greater after the rates were fixed in Stanislaus County than their annual average before, and that, had complainant not, of its own accord, reduced some of its rates in Merced and Fresno counties, its net receipts would have been considerably greater. Now there was absolutely no basis for this theory so accepted by the Circuit Court, since under the Act of 1885, the Supervisors of Stanislaus County had no power whatever to fix the rates in the two other counties, and since under that Act they had a right to fix the rates for Stanislaus County *in the belief and on the supposition that the rates in the two other counties would remain unchanged until the Supervisors of those counties should fix them,* because it was expressly provided in Section 5 of that Act that, *until the Supervisors of those two other counties should fix rates, the rates to be collected by complainant in those*

counties should be the rates therein established and collected by it; and further in Section 6, to the effect that the rates fixed by the Supervisors of Stanislaus County might be abrogated and new rates fixed a year after June 26, 1896. This being the law under which the Supervisors of Stanislaus County were acting, how can it be possible to hold that they, in fixing the rates for Stanislaus County only, must be presumed to have fixed them on the theory that they would apply also in the two other counties, although they did not in fact, nor could they in law, so apply. Practically the same contention was made by the Water Company in *San Diego Land Co.* vs. *National City,* 174 U. S., 739, and was disposed of by this Court as follows: "One of the points in dispute in- "volves the question whether the losses to the appel- "lant arising from the distribution of water to con- "sumers *outside of the city* are to be considered in "fixing the rates for consumers within the city. In "our judgment the Circuit Court properly held that "the defendant city was not required to adjust rates "for water furnished to it and to its inhabitants, so "as to compensate the plaintiff for any such losses. "This is so clear that we deem it unnecessary to do "more than to state the conclusion reached by us on "this point" (p. 758).

The Supreme Court of California has expressly decided that a water company can, under the Act of 1885, and until the Supervisors of a county have

fixed rates thereunder, collect from the consumers in such county the rates it may have itself fixed.

Fresno Canal, etc., Co. vs. *Park,* 129 Cal., 437. 445.

In support of their theory, counsel for complainant, as before stated, inserted in Exhibit 11 estimates showing that, if the Stanislaus rate of $1.50 should be applied in all three counties, the gross receipts of complainant would be $23,909.00 less than such receipts at its so-called "regular rate" for 1897, and $29,856.50 less for 1898 (429, 430, 444). But even in these estimates counsel has made a gross error, since in estimating under the Stanislaus rate of $1.50, he has charged Miller & Lux and their tenants at the rate of only 75 cents an acre, for which there is absolutely no warrant if this theory of the application of the $1.50 in all three counties be correct. This error as to 18,913 acres, on correction adds $14,184.75 to said gross receipts for 1897, making the total $54,984.25, and the correction of the same error as to 1898 would make the total gross receipts on complainant's theory, $81,238.24 (Rec., 429, 430, 444).

So that, even should complainant's theory be accepted, it would, after deducting cost of maintenance, have received $35,043.38 net income for 1897, and $51,711.73 net income for 1898; both greater than the average income received before the rates

were fixed by the Supervisors. Since under the Act of 1885, the rates fixed by Stanislaus County by its Supervisors could be abrogated and fixed anew at the end of a year upon complainant's petition, the Supervisors furthermore had a right to act on the theory that application to refix the rates would be made should the other counties act in the matter to complainant's detriment.

We contend, first, that the rates fixed by the Supervisors of Stanislaus County could, under the Act of 1885, apply within that county only, and that as matter of fact they were only so applied by complainant, notwithstanding its said theory to the contrary.

Second, that in determining whether or not the Supervisors' rates so applicable and applied in Stanislaus County only, deprived complainant of property without due process of law, they should be considered in connection with the rates actually enforced by complainant in the two other counties; in other words, the actual income from the whole system is the test, as was decided by this Court in *St. Louis & San Francisco Ry. Co.* vs. *Gill,* 156 U. S., 649, where statutory rates *applicable to a part only* of the railroad were attacked. This Court there said: "The "company cannot claim the right to earn net profit "from every mile,, section or other part into which "the road might be divided, nor attack as unjust a "regulation which fixed a rate at which some such

"part would be unremunerative; that it would be "practically impossible to ascertain in what propor- "tion the several parts should share with others in "the expense and receipts in which they partici- "pated; and finally, that to the extent that the ques- "tion of injustice is to be determined by the effects "of the Act upon the earnings of the company, *the "earnings of the entire line must be estimated as "against all its legitimate expenses under the opera- "tion of the Act within the limits of the State of "Arkansas*" (p. 665). (*Italics ours.*)

THE EVIDENCE SHOWS THAT THE RATES FIXED BY STANISLAUS COUNTY WERE REASONABLE AND SHOULD BE LOWER IN THAT COUNTY THAN IN THE TWO OTHER COUNTIES, BECAUSE OF THE POOR SERVICE RENDERED BY COMPLAINANT IN THAT COUNTY.

The question of the reasonableness of the rates depends not only upon the value of the works, *but also upon the value of the service rendered.*

> *Smyth* vs. *Ames,* 169 U. S., p. 547.
> *San Diego L. Co.* vs. *National City,* 174 U. S., p. 755.

It appears from the evidence that, this irrigating canal with its parallels and laterals aggregates 120¾ miles within a distance of 71 miles (Rec., 71), and that it passes through Fresno and Merced counties

before it reaches Stanislaus County, into which it runs for 11½ miles (Rec., 111). Of the total of 37,-311.43 acres of farming lands irrigated in 1896, when the rates were fixed, 6,536.93 acres, or a little over 1-5th, lay in Stanislaus County, being all of Orestimba section, 6,440.93 acres, and 96 acres of Las Garzas section (Rec., 326, 415). C. E. Grunsky, Walter Jones and J. P. McGray, civil engineers and witnesses for complainant, testified that this canal, in carrying the water from its head works in Fresno County to its terminus in Stanislaus County, would lose from 20 to 30 per cent of the water from seepage and evaporation (Rec., 116 to 122). R. H. Goodwin, civil engineer, testified for defendants that the canal was "filled up in many places with silt" (Rec., 190). D. M. Rouse, superintendent of the canal, testified that the water in the canal was short in August, September, October and November of each year; that when the water was low, he would shut off the water from points above Stanislaus County and endeavor to send all the water down to that county and let them irrigate for a week or ten days, and then take it away from there; that he sometimes could get about half of the water down to Stanislaus when none of it was diverted elsewhere; that in the Fall he had *"a good deal of trouble down "at the lower end of the ditch about getting water "there, that there are times when there is not water "to run down there"* (Rec., 121, 122, 127). Mr. J.

T. Crow, a farmer in Stanislaus County, irrigating from the canal, testified that, at one time in 1898, the people in Stanislaus County could not even get water for their stock when water was being used for irrigation above Stanislaus County, and that for about two months the people in Stanislaus County did not get any water (Rec., 259, 265, 268). To the same effect was the testimony of Mr. C. C. Eastin (Rec., 273, 278). Mr. H. F. Sherman testified that, in August, 1897, he could not get water from the canal for irrigation when, at the same time, it was running down Las Garzas creek waterway (Merced County) to irrigate the wild lands of Miller & Lux (Rec., 287, 288). Complainant contended on the trial that, in times of low water, the irrigators in Stanislaus County had to give way to those above them on the canal because such upper irrigators were the first users of the water, and therefore had the prior right.

From all of which it appears with certainty that, the irrigators in Stanislaus County, being at the lower end of the canal, do not get the same amount of water from this canal in the dry season, when most needed, as those above them, and that this failure is due for the most part to the difficulty in delivering water in sufficient quantity at the end of the canal in the dry season, and that such failure is also partly due to discrimination by complainant in favor of Miller & Lux, who, as will hereafter be fully shown, own a majority of complainant's stock and who control and

operate this canal mainly for the benefit of their own irrigation at the expense of the rate-payers. Consequently, *the service received* by the rate-payers in Stanislaus County *was so poor,* from whatever cause is immaterial, *as to entitle them to a lower rate* than that charged in the other two counties.

THE OPERATION OF THE RATES, CONSIDERING THE VALUE OF THE CANAL IN STANISLAUS COUNTY ONLY.

Should the Court be of the opinion that the value of complainant's canal and the income therefrom should be considered with reference to such value and income in Stanislaus County only, then the estimates should be based upon the proportionate acreage from which revenue was derived in 1896 when the Supervisors' rates were fixed.

In 1896 the total of such acreage in all three counties was 37,258 acres, and of this 6,536 acres, or 17½ per cent, were in Stanislaus County (Rec., 326, 415). Now, if we first take $789,429.00, the alleged original cost of the entire canal as the value, then 17½ per cent of that sum, or $138,150.00, is the original cost value of that part of the canal used and useful in Stanislaus County. The total income collected in Stanislaus County for 1896, and just before the Supervisors' rates went into effect, was $15,696.00. The cost of maintaining the whole canal for 1896 was $23,319.00, of which 17½ per cent, the amount

chargeable in Stanislaus County, was $4,080.00, which gives net income from Stanislaus County in 1896 of $11,616.00, or about 8 1-3 per cent upon $138,150.00, the canal's cost value in that county. (Rec., 146, 326, 415). In 1897, under the Supervisors' rates, the net income in Stanislaus County was $7,482.00, or about 5 1-3 per cent upon such cost value in that county (Rec., 146, 226, 428). In 1898 such net income was $10,400.00, or nearly 7½ per cent upon such cost value (Rec., 326, 443).

Now, if we estimate in the same way upon $337,000.00, the present value of the entire canal as fixed by the Supervisors, we have as 17½ per cent thereof, or its useful value in Stanislaus County in 1896, the sum of $58,975.00. On this valuation, complainant's net income, under the Supervisors' rates, was about 12½ per cent for 1897, and about 17 per cent for 1898. From all of which, we claim it most conclusively appears that complainant is deriving a very large income in Stanislaus County under the Supervisors' rates based upon the value of the canal used and useful in that county, and especially so when we consider that the rate-payers in that county get comparatively very poor service, and it certainly does not appear that these rates in any manner deprive complainant of any property without due process of law.

Should similar calculations be made based upon the proportion of mileage of the canal in Stanislaus County and not upon acreage, then the result would

be even more favorable to defendants, since of the 71 miles of the canal embracing all its works, 11½ miles thereof only are in Stanislaus County, or about 16¼ per cent of the whole. Considering that this Court has laid down the rule that these rates are not to be estimated upon the capacity of the canal, but with reference to the extent of country actually under irrigation and the service rendered, it would seem that the foregoing estimate, based on the acreage actually irrigated and producing revenue is the most just to all concerned.

San Diego L. & T. Co. vs. *Jasper,* 189 U. S., p. 445.
Smyth vs. *Ames,* 169 U. S., p. 547.
San Diego L. Co. vs. *National City,* 174 U. S., p. 755.

AS CONCLUSIVE PROOF THAT THE RATES FIXED IN 1896 BY THE SUPERVISORS OF STANISLAUS COUNTY WERE FAIRER AND MORE REASONABLE THAN THOSE THERETOFORE PREVAILING IN THAT COUNTY, IT APPEARS IN EVIDENCE THAT FOR THE YEAR 1898, THE ACREAGE UNDER IRRIGATION IN THAT COUNTY WAS GREATLY INCREASED UNDER THE SUPERVISORS' RATES.

In 1896, the total acreage under irrigation in Stanislaus County, under complainant's then so-called "regular rates" before the Supervisors' rates took

effect, was 6,440 acres in Orestimba section and 96 in Las Garzas section; total, 6,536 acres (Rec., 326, 415). In 1897, there was apparently no increase of acreage in Stanislaus County, but in 1898, such acreage *in that county* under irrigation rose to 9,864 acres in Orestimba section, and in that part of Las Garzas section lying in that county to 170 acres; total, 10,034 acres, or an increase of 3,497 acres (Rec., 443). Complainant may claim this increase of over fifty per cent in the space of two years to be due to the new "Outside canal." This, however, was fully disproved on the trial by the testimony of complainant's witness and Secretary Mr. Merritt, who swore that this "outside canal" ran only as far as Los Banos creek, and that it was built to irrigate lands other than those under the present (main) canal running into Stanislaus County (84, 85). It will be seen from the map at the end of the record that, the "outside canal" stops at Los Banos Creek, fully fifteen miles from Stanislaus County. The Court will also, on examining Exhibit 11, at page 43 of the Record, see that the irrigation from this "outside canal" yielded in 1898, $11,131.70, which sum is not included in the figures given on the same page as to acreage and receipts from the Orestimba and Las Garzas sections. This shows beyond question that the increase in acreage could not have been due to the "outside canal." In addition to the foregoing, we have the direct testimony of Mr. Emil S. Wan-

genheim that the people of Stanislaus County, since the Supervisors fixed the rate at $1.50, had put a good deal more land under irrigation than before (Rec., 255). This undoubtedly explains why complainant has not applied to the Supervisors of Stanislaus County to fix anew these rates, and also why it voluntarily reduced the rates in Merced and Fresno counties; and it furthermore shows most conclusively that, the Supervisors' rates were more reasonable and beneficial in their actual operation to both complainant and its customers than were the former rates.

In connection with this matter we also direct attention to the testimony of defendants' witnesses Emil S. Wangenheim, J. S. Crow, C. C. Eastin and H. F. Sherman, all irrigators in Stanislaus County, to the effect that, at complainant's former rate of $2.50 per acre per year, the farmers could not profitably carry on their business, but that they could make some profit at the Supervisors' rates of $1.50 (Rec., 251 to 297). To offset this testimony, complainant introduced the testimony of twelve witnesses, seven of whom resided in Merced County, where, as we have seen, plenty of water from this canal can be had when the people of Stanislaus County can get very little, and sometimes none at all.

These witnesses testified in effect that, under the $2.50 rate, a farmer might make a profit of from $15.00 to $25.00 an acre from alfalfa, if he had

first-class soil, if everything was in good shape for irrigation, if the alfalfa did not rot, if there was plenty of water—and in short, if every condition was favorable.

But on the cross-examination of these witnesses, it did not appear that they, in their estimates, had included the interest on their investments or the taxes on the land, and only a few of them were able to show that they had made any money at all, and that very little. We do not see how this sort of testimony can assist the Court very much, and it most assuredly cannot overcome the fact in this case that the reduction of the rate by the Supervisors of Stanislaus County resulted, as before shown, to an increase of over fifty per cent in the irrigated acreage in that county (Rec., 305 to 373).

DIVIDENDS.

It appears that complainant has paid the following dividends on its 100,000 shares of stock:

1881	50 cts	$50,000
1882	40 cts	40,000
1883	25 cts	25,000
1885	15 cts	15,000
1887	60 cts	60,000 from sale of land.
1887	20 cts	20,000
1888	20 cts	20,000
1890	10 cts	10,000

1890.....	10 cts.....	10,000	from sale of land
1891.....	25 cts.....	25,000	
1892.....	25 cts.....	25,000	
1893.....	40 cts.....	40,000	
1894.....	40 cts.....	40,000	
1895.....	40 cts.....	40,000	
1896.....	20 cts.....	20,000	
1898.....	10 cts.....	10,000	

(Rec., 65, 67).

The reason that a dividend was passed in 1897, and that those for 1896 and 1898 were smaller than usual, is that $85,877.82 of the profits were expended on the "outside canal" that was begun in September, 1896, and completed in November, 1897 (Rec., 84, 85, 86, 87, 69). On November 15, 1898, after paying the $10,000.00 dividend for that year, and the application of moneys to the "outside canal," there remained in the complainant's treasury $23,219.20 of undivided profits (Rec., 69).

COMPLAINANT'S OTHER RATE THEORY.

Complainant urged in the Circuit Court, and may repeat here, still another theory upon which it claimed the Supervisors of Stanislaus County should have fixed the rates, viz: that inasmuch as the Act of 1885, in Section 5, provided that the rates should be fixed so as to give as near as may be not less than six per cent upon the value of the property used and

useful in furnishing water, and inasmuch as, according to complainant, all of the works above Stanislaus County were used and useful for irrigation in that county, and as that part of the works in that county were not, it claimed, used or useful to irrigate in the two other counties, and as the works in Stanislaus County were but one-eighth of the whole, that therefore, according to some subtle mathematical devices invented by counsel, the irrigators in Stanislaus County should be made to pay considerably more for water than those in the two other counties. The Judge of the Circuit Court did not accept this theory, nor even refer to it in his opinion, and we do not see any merit in it, or how it can be seriously urged. In the first place, it is not true that the works lying in Stanislaus County are not used or useful to the operation of those in the two other counties, since it must be apparent that the maintenance and operation of and income from the canal as a whole, and of the size and capacity required for all three counties, enables it to give better and cheaper service in the two other and upper counties than could be done if the canal was smaller and limited to those counties. The income received from the operation of the canal in Stanislaus County helps to maintain the canal and reduce the price of service in the two other counties. The case is analogous to assessed valuation of an entire railroad in a State and the apportionment of such valuation among the several counties according to

mileage therein for purposes of taxation. Parts of the railroad may earn very little as compared with other parts, and, in a sense, be less valuable, but the earning capacity of the entire road depends upon its operation as a whole, and the earning capacity of each part depends in a large measure upon the operation of all the parts as a unit. This method of valuing and apportioning the valuation of railroads for taxation purposes has been sustained by this Court, and we can see no substantial difference between that case and this as to the question raised.

Chicago, etc., R. R. Co. vs. *Iowa,* 94 U. S., 155.
State R. R. Tax Cases, 92 U. S., 575.
Columbus S. Ry. Co. vs. *Wright,* 151 U .S., 470.

Besides, if complainant's theory be applied to its logical conclusion, the irrigator near the head of this canal would get plenty of water at comparatively small cost, while the irrigator in Stanislaus County at the end of the canal, who gets comparatively little water and sometimes none at all—in short, much poorer service—would have to pay a much greater comparative rate.

VII.

THE EVIDENCE SHOWS THAT MILLER & LUX SINCE 1897 HAVE OWNED A MAJORITY OF THE STOCK IN COMPLAINANT CORPORATION AND HAVE CONTROLLED ITS BOARD OF DIRECTORS AND MANAGEMENT, AND THAT UNDER SUCH CONTROL, COMPLAINANT HAS ALLOWED AND STILL PERMITS MILLER & LUX TO IRRIGATE FROM ITS CANAL MANY THOUSANDS OF ACRES OF CULTIVATED LAND AT RATES LOWER THAN THOSE CHARGED TO OTHERS AND ALSO TO IRRIGATE WITHOUT ANY CHARGE A LARGE TRACT OF UNCULTIVATED LAND USED BY MILLER & LUX FOR PASTURAGE; AND THAT, IF SUCH DISCRIMINATION DID NOT EXIST, COMPLAINANT'S REVENUE WOULD BE GREATLY INCREASED. IN THE FACE OF SUCH DISCRIMINATION, A COURT OF EQUITY WILL NOT SET ASIDE AS UNREASONABLE THE SUPERVISORS' RATES COMPLAINED OF.

Miller & Lux was, until some time in 1897, a co-partnership consisting of Henry Miller and Charles Lux. After the death of Charles Lux, a corporation, Miller & Lux Company, was organized, to which, on June 4th, 1897, the business of the co-partnership was turned over (Rec. 60). The evidence shows that Miller & Lux has had, *since 1877, absolute control of complainant corporation.* It appears from the testimony of Mr. C. Z. Merritt, complainant's

secretary, that of the 100,000 shares of complainant's capital stock, Miller & Lux Co. own 54,503 shares, and that, in addition thereto 13,941 shares stand in the name of Henry Miller, of Miller & Lux Co. So that Miller & Lux own or control 68,444 shares of the 100,000 shares of complainant's stock (Rec. 60, 80, 81, 82). Of the seven directors or trustees of complainant corporation, four, viz.: Messrs. Allen, Nickel, Potter, and Mr. Henry Miller represent the interests of Miller & Lux Co. Mr. Miller is part owner in Miller & Lux. Mr. Nickel is Mr. Miller's son-in-law, Mr. Potter is a stockholder in Miller & Lux, and the executor of the will of Charles Lux, deceased. Mr. Allen's wife is a stockholder in Miller & Lux, and it was admitted that he held stock in complainant also for the benefit of Miller & Lux. Mr. Henry Miller is the President and Chief Executive officer of complainant and gives general directions to the Superintendent touching matters of policy and management (Rec. 59, 78, 79).

It also appears from resolutions passed by complainant's directors that Henry Miller was given authority to employ and discharge, in his discretion, all persons in complainant's employ; to settle all claims of wages and supplies and to draw drafts (Rec. 161, 168, 170). And finally, although Mr. Merritt testified that Miller & Lux first obtained a controlling interest in complainant in October, 1878 (Rec. 60), nevertheless complainant's counsel expressly admit-

ted on the trial that such control was first obtained on December 4th, 1877, and that ever since, Miller & Lux have had a majority of complainant's directors (Rec. 159).

It also appears that there are about 300,000 acres of land lying under complainant's canal irrigable therefrom, and that, of such lands, about 200,000 acres belong to Miller & Lux (Rec. 101, 102, 226).

In 1896, the total acreage of *cultivated lands* irrigated by this canal was 37,311.43 acres, of which Miller & Lux irrigated 20,808 acres. In 1897, such total was 37,098.50 acres, of which Miller & Lux irrigated 21,173 acres. In 1898, such total was 47,145.50 acres, of which Miller & Lux irrigated 23,978 acres (Rec. 415, 428, 429, 444). We will first deal with the discrimination in irrigating these cultivated lands, and then with the free water to Miller & Lux for their uncultivated or pasturage lands.

On the 18th day of May, 1871, complainant's predecessor, the San Joaquin & Kings River Canal Company, made a contract (Complainant's exhibit 4) with Miller & Lux, whereby the canal company agreed to construct a canal for 60 miles, and to furnish Miller & Lux water to irrigate 50,000 acres of land, and whereby, under certain conditions. Miller & Lux were to pay the Canal Company a subsidy of $20,000. Miller & Lux also agreed to give and grant a right of way for the canal over their lands in Fresno and Merced counties, and they also agreed to pay for ir-

rigation a sum not exceeding $1.25 per acre for each crop, or the prices paid by other parties (Rec. 380). After the incorporation of the complainant, viz: on the 7th day of February, 1872, complainant and Miller & Lux entered into a contract (Complainant's exhibit 5), by which the above contract, Exhibit 4, was expressly cancelled. By Exhibit 5 Miller & Lux agreed to pay complainant a subsidy towards building the canal of $20.000.00. so that it would irrigate 50,000 acres of their lands Miller & Lux also *gave and granted* to complainant a right of way over their lands for the canal in the counties of Fresno, Merced and Stanislaus, and in clause 5, agreed to pay complainant "for water furnished by it, used "in irrigating each crop, the regular price paid by "others for irrigation not to exceed $1.25 per acre," and complainant agreed in clause 10 to furnish Miller & Lux "a sufficiency of water from its canal for "their cattle and for all domestic purposes of themselves, their tenants, and employees, free of charge" (*Italics ours.*) (Rec. 383.)

It appears that differences arose between complainant and Miller & Lux as to the non-payment by the latter for irrigation under the last above contract, and that, complainant brought suit against Miller & Lux to recover $70,000 on that account. Now, while this suit was pending, *and after Miller & Lux had obtained control of a majority of complainant's stock and of its Board of Directors,* complainant, on

November 12th, 1879, entered into a further agreement with Miller & Lux (Complainant's Exhibit 6), dismissing said suit, and making the following provisions as to charges against Miller & Lux for water (The Exhibit A referred to being the aforesaid Exhibit 5). "Said party of the first part in considera- "tion of the premises and of the execution and de- "livery of said deed (right of way) hereby coven- "ants and agrees that subdivision fifth of the con- "tract referred to as Exhibit 'A' in the complaint "filed in that certain action now pending in the Dis- "trict Court of the Nineteenth Judicial District of "the State of California, in and for the City and "County of San Francisco, entitled 'the San Joaquin "'and Kings River Canal and Irrigation Company "'vs. Henry Miller and Charles Lux,' being the "same contract hereinbefore referred to and bearing "date the seventh day of February, A. D. 1872, "shall be construed to mean that this Company the "party of the first part herein, will deliver water "thereunder at its regular rates not exceeding one "dollar and twenty-five cents per acre per crop, pro- "vided the crops are cut, but in case the alfalfa "lands should be pastured, then each supply of water "of the usual quantity supplied to produce a crop "shall be deemed to be such a supply as will entitle "a charge to be made therefore, the same as if a crop "shall be cut, and said subdivision shall likewise ap- "ply with the proviso aforesaid, to said Miller &

" Lux, their tenants, employees, heirs, executors and " administrators, and shall run with the land so long " as this company exists to the extent of thirty-three " thousand three hundred and thirty-three and one- " third (33,333 1-3) acres, but shall not apply to the " grantees of said Miller & Lux, nor to the grantees " of their heirs, executors, or administrators; and " subdivision tenth of said contract shall apply to all " domestic animals, owned pastured or cared for by " Miller & Lux, their tenants, employees, heirs, ex- " ecutors or administrators" (Rec. 140, 387). Complainant's Secretary, Mr. Merritt, testified that this $70,000 was, on this settlement, credited to Miller & Lux on their water account with complainant (Rec. 140). See also resolutions (Rec. 141-142). We see, therefore, that under this contract made in 1879, Miller & Lux could use all the water they desired and as often as they pleased to produce one crop a year to the extent of 33,333 1-3 acres at rates not exceeding $1.25 per acre, and that they and their tenants still had the right under subdivision 10 of the contract of February 7th, 1872, to free water for their cattle and domestic purposes.

That this constituted an outrageous discrimination appears from an examination of Exhibit 11. As to alfalfa, counsel will doubtless claim that Miller & Lux irrigated for only one crop a year. There is no evidence in this case that their irrigation was limited to one crop of alfalfa, but should we assume that

to be so, yet there remains the cereals, grain of which but one crop a year can possibly be raised, and the "hay" cut from wheat or barley of which but one crop can be grown each year. It appears from Exhibit 11 that for the years 1896 and 1897, while Miller & Lux were never charged more than $1.25 for grain, yet others had to pay from $2 to $1.50 for the same. This amounted in 1896, if we charge $1.50, to a difference of $2210 that complainant should have collected from Miller & Lux, and that it did not collect, and in 1897 to $2156.25 (Rec. 415, 429). But not satisfied with the discriminating rates, under Exhibit 6, complainant agreed with Miller & Lux Co., by still another contract (Complainant's Exhibit 22), dated December 24th, 1897, that the latter need only pay "for each crop irrigated, or for water furnished "of the usual quantity, supplied to produce a single "crop, *one half of the regular rates per season* of two "crops, but not in any case to exceed $1.25 per acre "per crop." (*Italics ours.*) (Rec. 396.) Here was a still further grossly outrageous reduction in favor of Miller & Lux to the extent of *one half of the regular rates,* and if we examine Exhibit 11 as to the receipts for 1898, when these further rates were first in operation as to Miller & Lux, we find that the total amount lost to complainant for that year at such reduced rates was $8,302 (Rec. 443, 444). By each of these contracts following the first one, Miller & Lux, controlling complainant's directors, obtained lower

and still lower rates. They constitute a progressive reduction of rates, so that the next one will probably give Miller & Lux water for nothing, because of the money subsidy and rights of way given by them years ago to induce the building of the canal, and which considerations were fully exhausted in Exhibit 5.

Whether these discriminating contracts are valid or invalid as between the parties to them cannot be here decided, since Miller & Lux are not parties to this suit. But even on the assumption that Miller & Lux can enforce such contracts against complainant, nevertheless we say that they have an important bearing upon the main question in this case. *How can complainant come into a Court of equity and expect to be heard to ask such Court for a decree that the Supervisors' rates are unreasonably low, and, at the same time, have it appear that in 1896, when these rates were fixed, it was, and ever since has, by contract with its largest consumer furnished water to that customer at rates not only less than the so-called "regular rates" at which it was supplying its other consumers, but even less than the Supervisors' rates complained of.* These discriminating contracts do not provide that they shall be in force for any period of time, and complainant, before bringing this suit, should have terminated them and subjected Miller & Lux to the same rates as others had to pay. Such discrimination being grossly unequitable, complain-

ant does not come into a Court of equity with clean hands and hence is not entitled to relief.

Galloway vs. *Findley*, 12 Pet., 297.
Roberts vs. *Northern Pac. R. Co.*, 158 U. S. 13.
New York vs. *Pine*, 185 U S. 103.

It is of course obvious that, but for the discrimination in favor of Miller & Lux, complainant's income would be very considerably increased in the amounts already indicated, so that, had there been no such discrimination, there could be no possible claim that the Supervisors' rates were insufficient, even were they considered as applied in all three counties. Complainant alleges in its bill "that on "the 1st day of January, 1896, and at all times there- "after, until the adoption of the pretended regula- "tion by the defendants of the rates of the complain- "ant, as hereinafter averred, the complainant "charged to its customers and the consumers of its "waters in the counties of Fresno, Merced and Stan- "islaus, the following sums and amounts: for irri- "gating alfalfa, $2.50 per acre per annum; for irri- "gating cereals, $2.50 per acre per annum." We now see from the evidence that such allegations were wholly untrue, since it appears from Exhibit 11, and from the discriminating contracts that a large part of the irrigation by Miller & Lux was given at much lower rates than those alleged in the

bill, and yet, in the face of this undisputed evidence the Judge of the Circuit Court said in his opinion Prior to this order of the Board of Supervisors *"the "rates which had been fixed by complainant and "charged* to consumers of water in the counties of "Fresno, Merced and Stanislaus, were as follows: "For irrigating alfalfa, $2.50 per acre per annum; "for irrigating cereals, $2 per acre per annum." (*Italics ours.*) (Rec. 48.) There is, we claim, *a fatal variance* between the allegations of the bill and the proof in this regard, irrespective of the question of equity.

COMPLAINANT STILL FURTHER DISCRIMINATED IN FAVOR OF MILLER & LUX BY GIVING THEM, WITHOUT CHARGE, THE SO-CALLED SURPLUS OR WASTE WATER FROM THE CANAL TO IRRIGATE 60,000 ACRES OF THEIR UNCULTIVATED LANDS FOR PASTURAGE PURPOSES.

Of the 300,000 acres of land under this canal, about 200,000 acres belong to Miller & Lux, of which it appears they irrigate as *cultivated land* from 20,808 acres in 1896, to 23,978 in 1898 (Rec. 415, 429, 444). Besides farming, Miller & Lux pastured their cattle upon their uncultivated lands irrigable from the canal. There appears to have been at certain times of the year a quantity of the water of the canal that was not purchased or used by irrigators of the cultivated lands, and which is referred to in the

record as the surplus or waste water from the canal. It is clear that if such so-called waste water is used by any person *who should pay for it,* that it cannot be said to be waste water, and that it would be properly waste water only when it cannot possibly be sold.

The evidence is clear in this record that complainant not only for years permitted, but that it finally, pending this suit, expressly agreed to the use by Miller & Lux of this so-called waste water without charge therefor. This waste water was very valuable to Miller & Lux in irrigating their vast tract of uncultivated land for the purpose of pasturing their cattle thereon. One of the witnesses, R. H. Goodwin, Civil Engineer, estimated that Miller & Lux were so irrigating 40,000 acres near the upper end of the canal (Rec. 228, 229). Mr. Emil S. Wangenheim testified that he resided in Stanislaus County, was a stockholder in Simon Newman Co., that had 3,000 acres below this canal that could be irrigated by the waste water that complainant wasted down San Luis Creek, that his company prepared to use that waste water, but that after his company had made such preparations, complainant never turned any more water down that creek, but turned it on the land of Miller & Lux; but that his company afterwards got some of this waste water *when it paid for it;* that one of the complainant's rules that puts it in practice up there is that, waste water must be paid for by the people using it; and that he knew that water

had been turned down the waste creeks when people have asked for it, and could have irrigated with it, but were refused it, and that such waste water ran down and spread out over the lands of Miller & Lux (Rec. 250 to 254).

Mr. J. S. Crow testified that he had lived at Crow's Landing, Stanislaus County, for twenty-five years; that Orestimba Creek (in Stanislaus County) was used as a waste way for this canal. That when the canal was built as far as that creek, it was emptied into the creek and ran into the San Joaquin river. That his father, who had owned 1000 acres of land there, had put a dam in the creek and had irrigated his land with the waste water from the canal, and that complainant required him to pay therefore $1.25 an acre. That Miller & Lux irrigated from 60,000 to 75,000 acres of land from the canal that was poor land producing very little grass before irrigation, but that since water had gone on it, it makes good feed and lots of grass that enabled Miller & Lux to pasture thereon many thousand head of cattle (Rec. 259 to 264).

H. F. Sherman testified that he had resided near Newman in Stanislaus County for twenty years; that he knew where the lands of Miller & Lux lay below the canal; that 75,000 or 80,000 acres of their uncultivated land was checked and levied for irrigation and was irrigated from the canal; that Miller & Lux had a perfect system of wing levees or dams for hand-

ling this waste water on their uncultivated lands, which, with the water on it, produced good stock feed upon which cattle got fat, and that it enabled Miller & Lux to sustain and keep there a large amount of cattle (Rec. 283, 284, 289, 290).

A. W. South, a Surveyor, testified that he had surveyed a large part of the land in the neighborhood of this canal and had observed the amount of uncultivated lands of Miller & Lux irrigated from the canal, and that he roughly estimated the same at 70,000 acres (Rec. 293-4).

If any further evidence is needed to thoroughly establish the fact that Miller & Lux for years have been and are still irrigating their large tract of pasturage land with this so-called waste water, it is furnished by the admissions of complainant in the resolutions of its Board of Directors leading up to the agreement it made with Miller & Lux pending this suit as to these waste waters. It appears that on May 5th, 1899, before the testimony in this suit was closed, complainant's directors met and that their attention was called to the fact that the defendants in this suit had charged that complainant was furnishing Miller & Lux with water free of charge, whereupon a committee was appointed to investigate and report (Rec. 172). That committee reported at the directors' meeting of May 17th, 1899, that Miller & Lux had a right to waste water from complainant's canal, free of charge (Rec. 173). Whereupon com-

plainant and Miller & Lux made the agreement dated May 18th, 1899 (Respondent's Exhibit E), as follows: "This agreement made this 18th day of May, "1899, by and between the San Joaquin and King's "River Canal and Irrigation Company, a corpora- "tion organized and existing under the laws of the "State of California, the party of the first part, and "Miller & Lux, also a corporation organized and "existing under the laws of said State, the party of "the second part, witnesseth: That whereas, prior "to the construction of the canal of the party of the "first part, Henry Miller and Charles Lux were the "owners of the land lying along and bordering upon "the San Joaquin River, and its sloughs, in said "State, and lying above and below the head of the "canal of the party of the first part, and were the "owners of riparian rights in and to the waters of "said river and sloughs, and had been accustomed "to and did actually use the waters of said river and "sloughs which naturally overflowed said lands, and "also to take water therefrom by artificial means, "for the purpose of irrigating said lands and fur- "nishing water for their cattle and live stock, and "for other domestic uses, in accordance with their "said riparian rights; and whereas, said Henry "Miller and Charles Lux, for the purpose of aiding "the construction of said canal of the party of the "first part, did pay to the party of the first part a sub- "sidy in money and conveyed to it a right of way for

" its said canal where the same passed through the " lands of said Henry Miller and Charles Lux of a " width of one hundred (100) feet on each side of " the center line of said canal, and permitted the " party of the first part to appropriate and divert " from said river through said canal eight hundred " (800) cubic feet per second of the water flowing " in said river; and whereas, at all times since said " appropriation was made by the party of the first " part, said Henry Miller and Charles Lux, and said " Henry Miller, as the survivor of them, and the " party of the second part (as the successor in inter- " est of said Henry Miller and Charles Lux) con- " tinued, as said riparian owners, to use the overflow " waters of said river and sloughs upon said lands for " the aforesaid purposes, and also to use for the pur- " pose of irrigating uncultivated land, and furnish- " ing water for their live stock and for other domes- " tic uses, and with the consent of the party of the " first part, and without any charge therefor by it, the " surplus water running in said canal not used or re- " quired by the water-consumers of the party of the " first part, other than said Henry Miller, Charles " Lux, and the party of the second part; and whereas, " during all said times it was understood by all said " parties that said Henry Miller and Charles Lux, " and said Henry Miller as the survivor of them, " and said party of the second part, as the successor " in interest of them, were of right entitled to the

"said use, without charge, of the said surplus water "in said canal; and that said party of the first part "was of right entitled to waste said surplus water on "said uncultivated lands; and whereas, the party of "the second part has agreed to permit the party of "the first part to appropriate and divert from said "river, through its 'outside canal,' three hundred "and fifty (350) cubic feet per second of the water "flowing in said river in addition to the aforesaid "eight hundred (800) cubic feet per second; now, "therefore, in consideration of the premises, and to "the end that the rights of the respective parties "hereto, as heretofore understood and recognized, "may be fixed and established, the party of the first "part does hereby confirm unto said party of the sec- "ond part the right to use, for the purposes of irri- "gating the said uncultivated lands above referred "to, and of furnishing water for its cattle and live "stock, and for other domestic uses, free of costs or "charge to it, all or so much of the surplus water "running in the canals of the party of the first part "as the party of the second part may desire to use "for said purposes, and which may not be used or "required by the other water consumers of the party "of the first part; and said party of the second part "does hereby confirm unto said party of the first part "the right to waste said surplus water on said un- "cultivated lands.

"And the party of the first part does hereby

"acknowledge and declare that it has no claim to "make against the party of the second part, or its "predecessors in interest, on account of the use here- "tofore made by it and them of said surplus water. "In witness whereof the said parties hereto have "caused these presents to be subscribed by their re- "spective presidents and secretaries, under their re- "spective corporate seals, all on the day and year first "above written.

"THE SAN JOAQUIN & KINGS RIVER CANAL & IRRI- "GATION CO.,

"By HENRY MILLER, President. (Seal.)
"By C. Z. MERRITT, Secretary.

"(Seal.) MILLER & LUX,
"By HENRY MILLER, President.
"By DAVID BROWN, Secretary" (Rec. 399).

The consent of about one-half of the minority stockholders of complainant to this agreement and the record of their meeting show that they failed to properly investigate or understand the matter, or were, as usual, afraid to act against those in control (Rec. 182).

All of this simply means that complainant, having, by reason of this suit, *been caught in the act of giving away* to its controlling stockholder water to irrigate thousands of acres of land for pasturing thousands of cattle, attempted to justify, possibly to its minority

stockholders, its unlawful acts in that regard. If the proceedings by and before complainant's board of directors leading up to this agreement are examined, it will be seen that no contest whatever in this matter was made or attempted against Miller & Lux; but as they owned a majority of complainant's stock and controlled absolutely its board of directors, the unexpected did not happen (Rec. 172 to 177).

Any one familiar with this record and with the law governing complainant in its exercise of its public trust in appropriating the public waters of the State for public use and for *sale or rental only* under such public use, will readily see the illegality of this alleged contract, although we are here not bound to show its invalidity, but only to point out its discrimination.

In the first place, it should be noted that the use of water for watering cattle and other live stock is a very different thing from its use for irrigating uncultivated land for the purpose of pasturing cattle or other live stock. By subdivision 10 of Exhibit 6, complainant had, as we have shown, granted Miller & Lux the use of water for their cattle and for domestic purposes (Rec. 385), and such right was in itself a great discrimination in favor of Miller & Lux, since they watered thousands of cattle, while other consumers had comparatively few. That this discrimination should not be glaringly apparent, com-

plainant does not appear to have charged any one anything for water for cattle or other stock, or for domestic purposes (Exhibit 11, Rec. 402). Consequently, the use by Miller & Lux of water for their live stock and domestic purposes has absolutely nothing to do (as pretended in this Exhibit E) with their use of this so-called waste water. The allegation in Exhibit E that Miller & Lux had, since the appropriation by complainant of the waters of the San Joaquin River, used the waste waters from the canal to irrigate uncultivated lands is shown by this record *to be false.* Extension A of the canal was completed to Orestimba Creek in Stanislaus County in September, 1878, and extension B to the end of the canal in 1881 (Rec. 70). Now it appears from complainant's minutes of May 1st, 1877, that the application of Miller & Lux to it for "water to overflow grass lands" was rejected by complainant, and that the rate for irrigating uncultivated grass lands was then fixed at $1.25 per acre (Rec. 159). It is, therefore, very significant that within eight months after such action by complainant's Board of Directors, Miller & Lux, on December 4th, 1877, acquired at the stockholders' election held on that day, control of complainant's direct[illegible], and which control they have held ever since (Rec. 159), so that the consent by complainant to the use by Miller & Lux of this so-called waste water dates only from the time that the latter came into control of the former, and it

is the kind of consent that Faust, after the sale of his soul, gave to Mephistopheles. It was compelled to consent.

Another alleged consideration in Exhibit E is to the effect that, such waste water is the equivalent of the riparian rights of Miller & Lux to the waters of the San Joaquin River, and which riparian rights it is intimated (but not asserted) that complainant destroyed by appropriating the waters of that river by its canal. There could be no such destruction or depreciation of such riparian rights, unless Miller & Lux, or complainant, can prove, which neither has attempted to do, that the appropriation by complainant of the waters of this river had deprived Miller & Lux of any considerable portion of its waters which they were entitled to use as riparian owners. It cannot be claimed and is not claimed or shown by any evidence in this record that Miller & Lux ever owned all the waters in the San Joaquin River as riparian owners, and even if they had owned or do now own all such waters, there is no principle of law that would compel complainant to transport any part of such riparian waters through its canal for seventy miles or for any distance, and deliver it free of charge as waste waters to Miller & Lux. It clearly appears from Exhibits 4, 5 and 6, already referred to, that Miller & Lux were most eager for the construction of this canal, for by those contracts and as inducement to complainant to construct the canal,

they gave complainant not only a large surplus in money, but also a right of way over their lands in the three counties. Nothing is said in these contracts as to free water for irrigating uncultivated lands, but they did provide for irrigating cultivated lands, and their intent is clear that Miller & Lux were to pay for *all irrigation of their lands,* and that the only free water was for watering stock and for domestic purposes. Those prior contracts furthermore exhausted the alleged consideration of subsidy money and rights of way, which are again brought forward to do double duty as alleged consideration in this Exhibit E. Those considerations are plainly overworked. These prior contracts further plainly show that Miller & Lux consented to the appropriation by complainant of the waters of the San Joaquin River, and in any Court of law or equity they effectually estop any claim by them that such appropriation in any manner deprived them of their riparian rights.

The same may be said as to the further alleged consideration in Exhibit E, viz: that Miller & Lux have agreed to permit complainant to appropriate from this river an additional 350 cubic feet per second of water for the "outside canal," since it appears that Mr. Henry Miller was the moving spirit in building this outside canal in 1896 and 1897; that Miller & Lux built it for complainant and that, at no time until Exhibit E was executed, in May, 1899, was any claim ever made by Miller & Lux that they were

entitled to any consideration on account of the additional water that this "outside canal" should take from the river (Rec. 86, 87). Again, by the maintenance and operation of a proper dam and headgate complainant can take into its canal very little of this so-called waste water, and when there is any such waste water, for which there is no customer, it can return it to the river through any of the natural creeks crossing the canal mentioned in the testimony as waste ways (Rec. 125-6). If these creeks have been stopped up, the obstructing dams and levees have, it appears, been put there by Miller & Lux, and they should be compelled to remove them (Rec. 284).

It must be apparent from this entire record as to the contracts and dealings between Miller & Lux and complainant. First, that Miller & Lux encouraged and assisted complainant to appropriate from the San Joaquin River all the waters thereof that its canal can carry, and that their acts in that regard, estop them from ever claiming compensation in so-called surplus or waste water, or in anything else, even though they should show (which they have not) a destruction or impairment of the riparian rights by reason of such appropriation.

Second. That complainant, up to the time that Miller & Lux secured control of its stock and directors, refused to permit Miller & Lux to use, free of

charge, this so-called waste water to irrigate its uncultivated lands.

Third. That after Miller & Lux obtained control of complainant, it used and continues to use, free of charge, such so-called waste waters to irrigate at least 60,000 acres of uncultivated lands whereon they pasture thousands of cattle.

Fourth. That other persons using this so-called waste water are made to pay for it.

Fifth. That Exhibit E is but a labored attempt by complainant, acting under control of Miller & Lux, and after the discrimination had been set up by the answer in this suit, to justify and to advance if possible some excuse for such discrimination.

Sixth. That the revenue lost to complainant by this discrimination in favor of Miller & Lux, irrigating, as the evidence shows, at least 60,000 acres of uncultivated pasturage lands upon which they fatten thousands of cattle, is, at the reasonable rate of $1 per acre per year, the sum of $60,000 in each year. It is furthermore to be noted that this free water contract was made with Miller & Lux in May, 1899, and that it was not in existence when the Supervisors fixed the rates in June, 1896, and consequently the Supervisors had a right to proceed on the theory that complainant would charge Miller & Lux for all water used by them from this canal. It cannot be denied that, if complainant had never built its canal, Miller & Lux, in order to irrigate the 90,000 acres of culti-

vated and pasturage lands it now irrigates from complainant's canal, *would have been compelled to have built its own canal at a cost nearly, if not equal, to the cost of complainant's canal.*

This being so, this whole matter of discrimination amounts to this, that Miller & Lux, by obtaining control of complainant's canal, are relieved of the cost of building their own canal, and are irrigating about 90,000 acres of their land at comparatively little cost and to a great extent free of charge at the expense of the other consumers.

A Court of equity looks through the form to the substance. So here, this Court, sitting as a Court of equity, must clearly see, we think, from this record, that Miller & Lux, masquerading under complainant's name, *is the real complainant in this suit,* and that, if the Supervisors' rates are held invalid the real beneficiary will be Miller & Lux, who will continue in the future, as in the past, to wholly control complainant, to the end that it will irrigate their immense tracts of lands at comparatively small cost and to a large extent free, while the other unfortunate irrigators must pay higher rates to keep up the canal for the benefit of Miller & Lux.

We have already seen that, under the Constitution of 1879, "The use of all water now appropriated, or "that may hereafter be appropriated, for sale, rental, "or distribution, is hereby declared to be a public "use, and subject to the regulation and control of

"the State, in the manner to be prescribed by law." (Sec. 1, Art. XIV.) and by section 5 of the Act of 1885, that the public waters appropriated by complainant can only be sold or rented at rates fixed by the Supervisors, or in the absence of Supervisors' rates, "*at the actual rates*" established by the complainant. Complainant cannot give away any of such appropriated waters, or dispose of them, *except at "actual rates"* so fixed. In its bill of complaint in this suit, complainant distinctly alleges "That for "more than ten years last past, your orator has been "engaged, and is still engaged, in the business of ap- "propriating water for irrigation, sale, rental and "distribution *for hire,*" and in paragraph third, it set up the *money rates* charged by it to *all its customers* (Rec. 2, 3).

Upon these allegations, complainant came into a Court of equity, that is, upon allegations of equal *rates in money to all its consumers,* whereas, the evidence shows discrimination in favor of Miller & Lux, amounting to at least $65,000 in each year in irrigating both their cultivated and pasturage lands; the cultivated land at money rates less than those charged others, and the pasture land at no money, or other rate, at all.

Defendants specially set up in their answer in this suit these discriminations by complainant in favor of Miller & Lux (Rec. 19-29). They were argued on the trial, as the briefs show, and yet, the learned

Judge of the Circuit Court, in his opinion, merely referred to the fact that such matters had been set up as defenses, but he did not, in his opinion, again refer to them (Rec. 41).

As affecting the inquiry here, it is immaterial whether or not this alleged agreement as to waste water be valid or invalid between complainant and Miller & Lux. Nor can this Court be here concerned about complainant's minority stockholders, lying, as this record shows, cowed and invertebrate under the heel of Miller & Lux; but this Court can say here and decide as a Court of equity that, complainant, thus grossly discriminating in favor of its controlling stockholder, will not be heard to complain that the Supervisors' rates are unreasonably low, when, if such discrimination was not practiced, it is apparent that complainant's income would be ample, even under rates much lower than those fixed by the Supervisors, and complained of.

Galloway vs. *Finley,* 12 Pet., 297.
New York vs. *Pine,* 185 U. S., 103.
Roberts vs. *Northern Pac. R.* 158 U. S. 13.

THE LAW IN CALIFORNIA AS TO CONTRACTS WITH A WATER COMPANY FOR SPECIAL RATES.

In 1896, when the rates were fixed by the Supervisors of Stanislaus County, it was, and is now, the law in California that *in the absence of and until a*

fixing of rates by the Supervisors of a County under the Act of 1885, a water company and a consumer in such County might by contract provide for a water rate which each could enforce against the other.

Fresno Canal, etc., Co. vs. *Park,* 129 Cal., 437-445.

San Diego F. Co. vs. *Souther* (C. C. A.), 104 Fed. Rep., 706.

Souther vs. *San Diego F. Co.,* 112 Fed. Rep., 228.

But it has never been decided in California that a Court of equity would, on the application of a water company appropriating the public waters of the State for sale and rental, set aside the Supervisors' public rates as unreasonably low when, it at the same time appears, as here, that such water company is furnishing large quantities of its waters to a customer under special contracts for rates lower than the public rates complained and when that customer is shown to control the water company. Such a question presents the equitable rights of the consumers under the public statutory rates against the water company complaining to a Court of equity of such public rates *when it is itself guilty of inequitable discrimination.* Such question is, for the first time, presented by this case, and is manifestly distinct from that involving the right of either party to such discriminatory rate-contract to enforce it against the other.

IN CONCLUSION.

Summarizing the salient points, we ask the Court to reverse the judgment of the Circuit Court and to dismiss the bill of complaint with costs.

First. Because the Circuit Court had no jurisdiction in equity of this suit on the ground of preventing a multiplicity of suits, or on any ground, since the defendants here sued, have no power anywhere given them to enforce the water rates complained of, and it is neither alleged nor proved that they are proceeding to, or threaten to, or that they, or any of them, can in any manner enforce said rates or injure complainant or its property and because such enforcement depends entirely upon the will and acts of the rate-payers who are not sued.

Second. Because the Circuit Court had no jurisdiction in equity, since complainant had an adequate remedy at law, in the right given to apply to the Board of Supervisors for new rates.

Third. Because, if the Circuit Court had jurisdiction, it erred in deciding that the original cost of the canal, and not its present value, was the basis upon which the rates should have been fixed.

Fourth. Because the Circuit Court erred in deciding the rates to be so unreasonably low as to de-

prive complainant of its property without due process of law, since it manifestly appears from the evidence that complainant's net annual income is ample under the rates complained of and that the same is increasing because of the fact that irrigation has greatly increased under those rates.

And furthermore, because it appears that complainant's revenues and income would be still further greatly increased did it not grossly and inequitably discriminate as to rates in favor of its controlling stockholder, Miller & Lux, and did it not give to such stockholder water free of charge.

Fifth. Because the Circuit Court erred in deciding that the rates complained of should be considered as applying in all three counties, when in law and in fact they could and did apply in Stanislaus County only.

Sixth. Because of such discrimination in favor of Miller & Lux, complainant is not in a position to claim in a court of equity that the Supervisors' rates are unreasonable.

Respectfully submitted,

DUNCAN HAYNE,
JAMES P. LANGHORNE,
F. D. McKENNEY,
Counsel for Appellants.

Supreme Court of the United States.

OCTOBER TERM, 1903.

No. 80.

THE COUNTY OF STANISLAUS ET AL., APPELLANTS,

vs.

THE SAN JOAQUIN AND KINGS RIVER CANAL AND IRRIGATION COMPANY, APPELLEE.

REPLY BRIEF FOR APPELLANTS.

Appellee having filed two briefs, the appellants, before the conclusion of the argument, file the following reply:

NO JURISDICTION OF THIS CASE IN EQUITY.

Counsel for appellee is mistaken in saying, at page 70 of his main brief, that this point was not presented in appellants' argument in the circuit court. We produce on the argument in this court the printed argument in the circuit court of the County and its Supervisors on their demurrer to the bill of complaint, where the point was expressly urged that there was no jurisdiction in equity against them, since they could not, under the act of 1885, enforce the rate ordinance, and there was no allegation of their attempt to do so.

In *San Diego L. & T. Co. vs. Jasper*, 189 U. S., 439, the county was made a defendant by the water company, *and made no point as to jurisdiction*, and we do not see how that case can, as to this question, be considered as deciding anything more than that a water company having brought the county into a court of equity to defend a rate ordinance passed by its supervisors, and the county consenting to jurisdiction, such water company cannot afterwards insist that the county had no right to defend the suit.

The case of *Spring Valley Water Works vs. San Francisco*, 82 Cal., 286, cited by counsel, does not sustain him, because there the rate ordinance was passed by the supervisors of a city under the provisions of section 1 of article XIV of the constitution of 1879 of California, which expressly gives the city the right to forfeit the franchise of the water company should it not comply with the rates fixed by the municipal supervisors (p. 304). The case was decided on demurrer to the complaint, which alleged that the city was about to enforce the rate ordinance (p. 301). In California, water rates are fixed in cities or municipalities under the above constitutional provision, while in counties outside of cities they are fixed under the act of 1885.

In *Chicago Ry. Co. vs. Minnesota*, 134 U. S., 418, the Railroad Commission had power given it by statute to enforce the rates by mandamus (pp. 434–435), and what was there said by Mr. Justice Miller about the remedy was really not involved in the decision of the case. What the learned justice there said, however, is, we claim, authority for our contention that the "compendious remedy" of a suit in equity is not available where there is no commission or public official authorized to enforce the rates it may have fixed.

What was said by Mr. Justice Miller amounts to this, that a suit in equity to adjudge the rate void and enjoin its enforcement is the proper remedy, where there is opportunity under the principles of equity to resort to such remedy. That this must be so appears from the fact that, the language of the learned justice was quoted in *St. Louis & San Francisco Ry. Co. vs. Gill*, 156 U. S., 649, where the rates had been fixed by act of the legislature and no public commission or official charged with their enforcement, and where this court held that the validity of the rates could be decided *only* in an action at law by a passenger for the penalty. We fail to perceive wherein the case at bar differs in principle from the one last cited, where the rates were fixed directly by act of the legislature, with no authority given any public official to enforce them, for in the case at bar the rates are fixed by the supervisors under legislative authority and no public official is authorized to enforce them. In each instance, the enforcement of the rates is left to depend upon the will of the rate payer.

The Remedy at Law.

At page 39 of our opening brief we urge that the appellee had an adequate remedy at law in the right given it under the act of 1885 to apply to the supervisors to refix the rates.

Appellee, at page 71 of its main brief, says that this point was never brought to the attention of the court below. Counsel is mistaken, for on pages 173–174 of Mr. Stonesifer's printed argument for the county in the lower court the point was argued.

THE ACT OF 1862 IS VOID BECAUSE A SPECIAL ACT, IN VIOLATION OF SECTION 31, ARTICLE IV, OF THE CONSTITUTION OF 1849 OF CALIFORNIA.

We have dealt fully with this question in our opening brief (pp. 45–53). Counsel has not attempted to controvert our position or citations, which we claim to be conclusive. He has, however, at page 74 of his main brief, cited a number of cases from California which decide the general proposition that a classification will be sustained against the constitutional inhibition against special legislation where it is founded upon some natural or intrinsic distinction clearly apparent from the subject-matter and the law making the classification. But here, there obviously can be no natural or intrinsic reason why an irrigation company should not operate and have its rates fixed in the eleven counties excepted by the act of 1862 from its provisions. The exception of these counties was purely arbitrary and was clearly local and special legislation under the Californian decisions cited by us, which counsel has not, in any manner, criticised. It is certain that the constitutional provision in question, as construed by the supreme court of California, required all corporations, other than municipal, to be formed under *general laws*—that is, by laws as to *each kind or class of corporation* operating throughout the *entire State*.

THE RESERVED POWER OF THE STATE TO ALTER THE ACT OF 1862 AS TO RATES AND BASIS OF VALUATION.

As to this question, which is presented between pages 52 and 80 of our main brief, counsel cites the following decisions not before commented on by us:

In *New Orleans Gas Co. vs. Louisiana L. Co.*, 115 U. S., 650–670, an *exclusive contract*, permissible under the constitution and laws of the State, had been made between the city of New Orleans and the complainant, and such contract was sustained by this court against subsequent impairment by the city.

In *Los Angeles vs. Los Angeles Water Co.*, 177 U. S., 558, there was an *express lease and contract* by the city to and with the water company, with an agreement not to reduce the water rates below those then existing.

In *Stearns vs. Minnesota*, 179 U. S., 223, there was a grant of lands by the State to the railroad company to assist in building the railroad, made on the express condition that the railroad should not pay taxes on such lands, but that it should pay 3 per cent. of its gross earnings instead of taxes.

These were all cases of express contracts for valuable considerations moving to the State or city from existing corporations, and showing a clear intent that they should not be subject to alteration. Such cases are, as fully shown in our opening brief and the decisions there cited, distinguishable from the rate-regulating act of 1862 relied on by the appellee.

No Competent Proof of the Cost of the Canal.

This was discussed in our opening brief (pp. 85 to 90). In reply, counsel contents himself with citing the stipulation (Record, p. 459) that complainant's books of account "were correctly kept." But that does not mean that the alleged expenditures shown by the books *were actually made*, especially since it appeared that the secretary of the com-

pany merely entered in those books the expenditures made by and reported by other persons.

The Extravagant Cost of the Canal.

At page 89 of our main brief we claimed that it appeared from complainant's records in evidence that there had been great extravagance in constructing the canal. The evidence as to this matter referred to by us *is in this printed record*, as stipulated to by the former counsel for appellants and present counsel for appellee (Rec., pp. 464, 465). Now, counsel for appellee says, at page 76 of his main brief, that the evidence on this point now in the printed record, stipulated to by him, should not be considered because of an alleged verbal stipulation he claims to have made with the former counsel (now dead) for appellants. We, the present counsel for appellants, never heard of this alleged verbal stipulation until after our brief was printed, and we present the point as to extravagant construction solely upon the evidence we find in the printed record.

Discrimination of Complainant in Favor of Miller & Lux as to Irrigating Cultivated Lands.

In reply to our argument on this matter between pages 120 and 129 of our main brief, counsel says that the discriminating contracts are supported by adequate considerations. There is, first, the question as to whether or not an irrigation company *appropriating the public waters of the State of California* can dispose of such waters except at *money rates*, under the constitutional and statutory provisions cited at pages 143–144 of our main brief. The question has never

been decided by the supreme court of California, and when presented to that court we feel confident that money rates will be enforced as to all consumers. But, assuming for sake of argument that it is otherwise, it appears from this record that the entire consideration from Miller & Lux to complainant was exhausted in contract, Exhibit 5, which was made in 1872, before Miller & Lux obtained control of complainant's stock and board of directors (Rec., p. 122). In contract, Exhibit 6, made in 1879, after Miller & Lux got control of complainant, the water rate, not to exceed $1.25 per acre, was, *without any additional consideration*, given for 33,333.33 acres to "Miller & Lux, their tenants, employees, heirs, executors, and administrators, and shall run with the land so long as this company (complainant) exists" (Rec., p. 387). This important privilege was not contained in the former contract, Exhibit 5; and yet it is based upon the same considerations from Miller & Lux to complainant as set forth in Exhibit 5, viz., a grant of right of way and payment of $20,000 as a subsidy. Again, in the last contract, Exhibit 22, *without the slightest additional consideration whatever from Miller & Lux*, complainant agrees to let them have water *at one-half* the regular rates, not to exceed $1.25 per acre (Rec., p. 396). All of this while other consumers were compelled to pay $2 for one crop of cereals and $2.50 for alfalfa. So it appears, without the possibility of contradiction, from the record that, these discriminations in favor of Miller & Lux shown by Exhibits 6 and 22, over and above those rates and priveleges granted by Exhibit 5, are without any consideration whatever.

Discrimination in Favor of Miller & Lux as to Waste Water.

This is quite fully presented in our main brief (pp. 129 to 145), and has not been answered by counsel. We think we have clearly shown that complainant's canal has been operated mainly for the benefit of Miller & Lux ever since they obtained control of complainant corporation in 1877, and that, but for the manifest discriminations in favor of Miller & Lux, complainant's revenue would be greatly in excess of what it now is. In the face of such discriminations, a court of equity should not hold the public or supervisor's rates insufficient.

Respectfully submitted.

Duncan Hayne,
James P. Langhorne,
Frederic D. McKenney,
For Appellants.

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IN THE

SUPREME COURT

OF THE

UNITED STATES.

OCTOBER TERM, 1903.

No. 80.

THE COUNTY OF STANISLAUS ET AL.,
Appellants,

VS.

THE SAN JOAQUIN AND KINGS RIVER CANAL AND IRRIGATION COMPANY,
Appellee.

BRIEF FOR APPELLEE.

We have not been favored with appellants' brief; and, finding that this case is likely to be reached for hearing at a very early day, we are compelled to prepare our brief without any information as to the argument to be made for appellants. Before the completion of this brief, however, their counsel furnished us an outline of the points they intend to make, which we will consider so far as we understand them.

We will discuss the points made in the lower court, prefacing them with a very brief statement of such of the facts as we suppose material to be here stated; and we will then add some remarks on points which counsel inform us they intend to urge, but which were not made in the lower court.

STATEMENT OF FACTS.

This is a suit in equity brought to obtain a decree that a certain ordinance of the Board of Supervisors of the defendant county, assuming to fix the rates for water furnished by complainant to the inhabitants of that county, is void, under the Constitution of the United States, as depriving complainant of its property without due process of law and denying to it the equal protection of the laws, and also to enjoin the enforcement of that ordinance.

The grounds on which complainant bases its right to relief are two: (1) that complainant is entitled, by express contract with the State, to much higher rates than those so fixed by the Supervisors, and (2) that, even apart from that contract, the rates fixed by the Supervisors do not and cannot afford to complainant any fair, just, or reasonable return upon the value of its property used and useful in supplying water to the public, nor any fair, just, or reasonable compensation for its services rendered to the public in that behalf. The particular facts on which these claims are based are fully stated in our argument.

Defendants controvert these contentions, and also allege that complainant has been guilty of such unjust discrimination in the conduct of its business as to deprive it of any

right to equitable relief. They also, as we are informed, intend to urge in this Court, for the first time, that the bill does not contain proper parties defendant, and that complainant has an adequate remedy at law.

The court below rendered a decree as prayed for in the bill, and the defendants have appealed.

Upon the assurance by counsel for appellants that certain points made by defendants in the court below would not be urged by them on this appeal, we consented, at their request, that the testimony bearing on those points might be omitted in printing the record; and therefore, by stipulation of parties (*Transcript*, pp. 464-5,) that testimony has not been printed. We shall, therefore, not refer to those points.

ARGUMENT.

I.

THE PROVISIONS OF SECTION 3 OF THE CALIFORNIA STATUTE OF MAY 14, 1862, CONSTITUTED A CONTRACT WITH COMPLAINANT. THE ACT OF MARCH 12, 1885, DID NOT ATTEMPT TO ALTER OR ABROGATE THAT CONTRACT; BUT, IF IT DID, SUCH ALTERATION OR ABROGATION IS VOID UNDER THE PROVISIONS OF SECTION 10 OF ARTICLE I OF THE CONSTITUTION OF THE UNITED STATES, AS IMPAIRING THE OBLIGATION OF A CONTRACT.

On May 14, 1862, the legislature of California passed an act (*California Stats.* 1862, 540) authorizing the incorporation of companies for the purposes of "the construction of "canals, for the transportation of passengers and freights, "or for the purpose of irrigation or water-power, or for the

"conveyance of water for mining or manufacturing pur-
"poses, or for all of such purposes." Section 3 of that act provided:

> "Every company organized as aforesaid shall have power, and the same is hereby *granted,* * * * to establish, collect, and receive rates, water rents, or tolls, which shall be subject to regulation by the Board of Supervisors of the county or counties in which the work is situated, *but which shall not be reduced by the Supervisors so low as to yield to the stockholders less that one and one-half per cent. per month upon the capital actually invested.*"

The complainant was incorporated in 1871, under the provisions of that act.

On March 12, 1885, the legislature passed an act (*Cal. Stats.* 1885, 95) providing, among other things, for the fixing, by the Board of Supervisors of a county, of the rates to be collected "by any person, company, association, or cor-
"poration, for the sale, rental, or distribution of any appro-
"priated water, to any of the inhabitants of such county." Section 5 of that act provided as follows:

> "Said Boards of Supervisors, in fixing such rates, shall, as near as may be, so adjust them that the net annual receipts and profits thereof to the said persons, companies, associations, and corporations * * * shall be not less than six nor more than eighteen per cent." [upon the value of the property used in supplying the water.]

Section 31 of article IV of the Constitution of the State (in force at the time of the passage of said Act of 1862) reads as follows:

"Corporations may be formed under general laws, but shall not be created by special act, except for municipal purposes. All general laws and special acts passed pursuant to this section may be altered from time to time, or repealed."

On these matters, we contend: (1) That the provisions of section 3 of the Act of 1862 constitute a contract with every corporation formed under that act, the stockholders of which invested capital therein with which works for the supplying of water were constructed or acquired: (2) That the act of 1885 does not attempt to alter or repeal those provisions; and (3) if that act can be construed as attempting such alteration or repeal, it is inoperative as against a corporation performing the conditions of the former act, before the passage of the latter one.

1. That such an act as that of 1862 constituted a contract is firmly settled by the decisions of this Court.

Gordon v. *The Appeal Tax Court*, 3 How. 133;
State Bank v. *Knoop*, 16 How. 369;
Bridge Proprietors v. *Hoboken Co.*, 1 Wall. 116;
The Binghamton Bridge, 3 Wall. 51;
New Orleans Gas Co. v. *Louisiana Light Co.*, 115 U. S. 650, 670;
Los Angeles v. *Los Angeles Water Co.*, 177 U. S. 558;
Stearns v. *Minnesota*, 179 U. S. 223;
Detroit v. *Detroit Citizens' Street Ry. Co.*, 184 U. S. 368.

To paraphrase the language of Mr. Justice Miller in *Bridge Proprietors* v. *Hoboken Co., supra,* (p. 146,) we may say:

> "Without this, they would not have invested their money in building the canal, which was then much needed, and which could not have been built without some such security for a permanent and sufficient return for the capital so expended. On the faith of this enactment they invested the money necessary to construct the canal. These acts and promises, on the one side and the other, are wanting in no element necessary to constitute a contract."

2. That portion of the Act of 1862 which declared that the right of the corporation to fix the rates for the water supplied by it should be subject to regulation by the Board of Supervisors, was, of course, not a contract. That right of the State existed without any assent on the part of the corporation. It was the limitation upon that right which constituted a contract. By that limitation the State pledged its faith, for a valuable consideration, that it would not do anything to prevent the corporation from receiving a return of eighteen per cent. per annum on its investment.

This contract, however, was made only with corporations organized under that act, and which, while it was in force, invested capital thereunder. In 1873, that act was superseded by the Civil Code of the State, which made complete provision for the formation of corporations, omitting any such provision as is here in question. By section 288 of that Code it was enacted that no corporation theretofore formed should be affected by the Code,

"but the laws under which such corporations were "formed and exist are applicable to all such corpora- "tions, and are repealed subject to the provisions of "this section."

When the Act of 1885 was passed, there were therefore two classes of corporations which might be affected by its provisions:—those formed under the Act of 1862, and which were entitled, by contract, to charge rates which would yield 18 per cent. per annum on their investment; and those formed under the Code, to which no particular rates were guaranteed.

When, therefore, the legislature, in 1885, passed this general act for the regulation of water-rates, which applied to all corporations, and as well to all natural persons, and provided generally that the rates should be fixed within a maximum limit of 18 per cent. per annum, and a minimum limit of 6 per cent., that act cannot be construed as intended to allow the Supervisors to reduce the rates below the maximum limit, in the case of a corporation then entitled, by contract, to that rate. To so construe that statute would violate two cardinal principles: that repeals by implication are not favored, and that, whatever the *power* of the legislature may be, it cannot be presumed to have *intended* to violate its solemn contract. Nothing less than clear and express language, or an irresistible implication, can justify such an interpretation.

It therefore appears to us that the Act of 1885 should be construed as giving this discretion to the Supervisors only in cases where the State had not previously made such a

contract, and that where there was such a contract, this Act required them to fix the maximum rate.

3. But, however that may be, the legislature did not possess the power to abrogate the contract in question.

We understand the position of the appellants to be that the provision of the State Constitution which we have quoted confers that power upon the legislature; and we are not aware that they claim that such a power would otherwise exist.

In determining the effect of that section of the State Constitution, two questions are to be considered: How far such a power as is here claimed can be lawfully exercised without violating section 10 of Article I of the Constitution of the United States; and whether this provision of the State Constitution does itself attempt to confer such power.

(*a*) It is well settled by this Court that, however broad may be the terms of a State constitution or statute reserving the right to amend the charter of a corporation, that power is not without limit. Notwithstanding such a reservation, the vested rights of the corporation are as inviolable as in other cases; nor can such a power be so exercised as to destroy the grant.

Shields v. *Ohio*, 95 U. S. 319, 324-5;
Holyoke Co. v. *Lyman*, 15 Wall. 500, 519;
Sinking Fund Cases, 99 U. S. 700, 720;
Close v. *Glenwood Cemetery*, 107 U. S. 466, 476;
N. Y. etc. R. Co. v. *Bristol*, 151 U. S. 556, 567;
U. S. v. *Union Pacific R. Co.*, 160 U. S. 1, 33, 36-7;

Lake Shore etc. R. Co. v. *Smith,* 173 U. S. 684, 690, 698.

The same doctrine has been declared by the Supreme Court of California.

Johnson v. *Goodyear Mg. Co.,* 127 Cal. 4, 17-18.

Upon this principle, the courts, in every case which has fallen within our observation, have held that such a reservation does not confer upon the legislature the right to alter or revoke such a contract as the one here in question,—certainly not, so long as the State retains the consideration, or continues to enforce, as against the corporation, the stipulations on the part of the latter.

Comrs. v. *Navigation Co.,* 79 Ky. 73;
Detroit v. *Plank Road Co.,* 43 Mich. 140;
Miller v. *N. Y. & Erie R. Co.,* 21 Barb. 513, 517;
Com. v. *Essex Co.,* 13 Gray, 239, 253;
In re Parrott, 1 Fed. Rep. 481, 485, 513;
People v. *O'Brien,* 111 N. Y. 1, 36, 44, 51;
Ball v. *Rutland R. Co.,* 93 Fed. Rep. 513;
Hill v. *Glasgow R. Co.,* 41 Fed. Rep. 610, 616;
Ohio v. *Neff,* 52 Ohio St. 375, 406;
Orr v. *Bracken Co.,* 81 Ky. 593, 596;
Lothrop v. *Stedman,* 13 Blatchf. 134;
Sage v. *Dillard,* 15 B. Mon. 340;
Stearns v. *Minnesota,* 179 U. S. 223.

This conclusion is in accord with the reasoning in the following cases, in which, however, this point was not involved:

Los Angeles v. *Los Angeles Water Co.*, 177 U. S. 558;
Detroit v. *Detroit Citizens' St. Ry Co.*, 184 U. S. 368.

This proposition applies with especial force to such a contract as this, when made between the State of California and a canal company organized under the laws of that State. Under those laws, the right to flowing water is a public use, and the right to take it for sale or distribution is a franchise, which can be exercised only by authority of law. A corporation, formed to sell or distribute water, must furnish the water to all who apply, and can retain its powers only on that condition. It therefore does not hold the water which it collects and supplies, or the plant which it uses for its collection and distribution, in absolute ownership. It must, so long as it retains that property, continue to perform this public duty; and when it ceases to perform it, its rights cease. From the very nature of the property, and these limitations on its use, the corporation cannot convert it to any other use; and therefore, when its franchise ceases, its property is lost to it,—its investment is substantially gone.

San Diego Water Co v. *San Diego*, 118 Cal. 556, 567, 568-9;
Price v. *Riverside etc. Co.*, 56 Cal. 431;
McCrary v. *Beaudry*, 67 Cal. 120;
Merrill v. *Southside Irr. Co.*, 112 Cal. 426.

Such being the law of California, it is apparent that the attempt, if attempt there was, to repeal section 3 of the Act

of 1862, was a repudiation by the State of the contract on its part, while retaining the consideration it received, and while continuing to hold the corporation bound to a performance of its covenants, on pain of forfeiture of all its rights. When the stockholders of this corporation, upon the faith of this promise by the State, invested their capital in these works, they parted with it irrevocably, and put it under the sole control of the State. For this property, thus placed at its disposal,—indeed, transferred to it,—the State promised a certain compensation. That compensation it is, by every principle of justice and equity, bound to render, so long as it holds that property. Yet it not only insists on holding that property, while denying the agreed compensation, but it requires the corporation to continue to perform those duties which it contracted to perform only for that consideration. We submit that the Constitution of the United States interposes an insuperable obstacle to such action.

(*b*) In examining this provision of the State Constitution, one consideration should be first noted. That provision does not authorize the legislature (in terms, at least) to alter or repeal the *charter* of a corporation. It prohibits the formation of private corporations by special act, but authorizes their formation "*under*" (not *by*) "general laws", and then provides that *those general laws* may be altered from time to time or repealed.

The general laws so referred to are merely statutes providing for the *formation* of corporations. As all legislation is presumed to act only *in futuro*, it is not apparent how the mere repeal of a general Act which authorized the for-

mation of corporations, and prescribed the method of their formation, can affect an existing corporation formed under that Act. After the repeal, no *new* corporation can be formed; but can it be said that an existing corporation is thereby dissolved?

This question has never, so far as we are aware, been definitely passed upon by any court. It was discussed, though perhaps not necessary to the decision, by the Court of Appeals of New York, in the case of *People* v. *O'Brien,* 111 N. Y. 1, 44-45. The court there points out the distinction between an authority to repeal a *statute* providing for the *formation* of corporations, and an authority to dissolve a *corporation* formed under that act. The former power, but not the latter, was expressly conferred by the constitution of that State; while the latter power was conferred by a statute. The court, in discussing the question, said (p. 45):

> "It seems to us that those provisions relate to different subjects, viz.: The repeal of laws, and the annulment of charters formed under such laws; and that *the power to do one, does not naturally or properly include the power to do the other.* Certainly the repeal of a law authorizing corporations, would not destroy organizations formed under it, nor would the annulment of a charter affect the law under which it was created. Neither does it seem reasonable to suppose, while taking away the power of the legislature to create corporate bodies, the Constitution intended to confer power to destroy them, thus enabling them to accomplish indirectly, that which they were precluded from doing directly. It must be assumed that the

framers of the Constitution, as well as the legislature, used the language employed by them intelligently and according to its common and customary signification, *and when they spoke of the annulment and repeal of acts and laws alone, did not intend to embrace charters as well.* These two subjects have frequently been the occasion of legislative action; and since the restriction upon the powers of the legislature to grant special charters, there is no reason to suppose that they did not use the language employed in its *literal* sense, and especially so when both subjects were immediately within the contemplation of the law makers."

The reasoning so outlined applies equally, of course, to the power to amend or alter; and it appears to us, for those reasons, that the California Constitution confers upon the legislature no power to alter or repeal the charter of a corporation, and no power on the subject except to alter or repeal laws for the formation of corporations.

If this construction be correct, this provision of the State constitution can not affect the present case.

(*c*) But, even if that construction is not correct, we submit that, for other reasons, the same result must follow. Even if the amendment or repeal of a general act providing for the formation of corporations, does work a corresponding alteration or abrogation of the charter of a corporation formed under it, yet it cannot be deemed that the constitution authorizes anything further. Though the charter may be amended, it cannot be presumed that the framers of the constitution intended that such amendment should relate to other matters than those mentioned in conferring the power.

Whatever things in the statute to be amended properly relate to the formation of corporations, including, doubtless, the internal as well as the external organization of a corporation, its methods of doing business, and the like, are subjects of amendment. But, if the statute contains other provisions, not relating, in any way, to the formation of corporations, the mere fact that those provisions are contained in the same statute, will not bring them within either the language or the spirit of this constitutional authority. If they constitute a contract, they *cannot* be amended or repealed.

Thus, suppose that an act for the formation of banking corporations, should contain a provision that every bank so incorporated should deposit in the State treasury a certain sum of money as a guaranty fund, which money should be subject to the use of the State, and for which the State should pay interest at the rate of five per cent. per annum. Suppose further that a corporation formed under that act should make the required deposit. Can the constitutional provision in question be construed as authorizing the legislature to enact that that deposit shall thereafter bear only four per cent. interest? Certainly, there is nothing in the *words* of that section of the constitution giving any such power. Giving the widest latitude of construction, we cannot suppose that any one would contend that such a matter is one relating to the formation of the corporation. To suppose that the statesmen who framed, and the people who adopted, that Constitution, intended to authorize such a flagrant breach of the public faith, is to impute something

which no court would be justified in imputing, in the absence of clear and unmistakable language.

Of precisely such a nature is section 3 of the Act of 1862, before quoted. By that section, the legislature, without guaranteeing to the stockholders a fixed income on the money contributed by them to the public use, did nevertheless agree that the State should not so exercise its power of regulating rates as to *prevent* them from realizing that income. That contract was no part of the formation of the corporation, nor even germane to that subject. It presupposed, of course, the existence of a corporation to be a party to it; but, in all other respects, it was such a contract as might as well have been made with a natural person. To hold that the power to abrogate this contract, after its complete execution by the corporation and its stockholders, was intended to be conferred upon the legislature by the State Constitution would be to enlarge the meaning of the words used, solely in order to work an injustice. In face of the *presumption* that *no* law was intended to produce an unjust result, no such construction is permissible.

We therefore submit that, even if the State Constitution could, without violating the Constitution of the United States, have authorized the legislature to abrogate this contract, while retaining the consideration, no such power was, in fact, conferred by the Constitution of California.

II.

THE BOARD OF SUPERVISORS, IN THE ORDINANCE IN QUESTION, DID NOT ALLOW TO COMPLAINANT THE INCOME PROVIDED BY THE ACT OF 1862, AND DID NOT, IN FIXING THE RATES, AT ALL TAKE INTO CONSIDERATION THE CAPITAL INVESTED UNDER THAT ACT. THAT ORDINANCE, THEREFORE, WAS NOT DUE PROCESS OF LAW.

1. It was proved, without contradiction, that, before the passage of the Act of 1885, the stockholders of the complainant corporation had actually contributed *not less than* $914,825, *in money*, to its capital stock (pp. 62-3); and that the construction of the canal and works of complainant actually cost *not less than* $798,429.61. (Complainant's Exhibit 12, page 445; Stipulations, pages 457, 459.)

Eighteen per cent. on $798,429.61 would be $143,717; to which amount at least complainant was entitled under the Act of 1862. The rates so fixed by the Board of Supervisors (though applying only to one county, and complainant having been able to maintain its rates in two other and larger counties) produced, for the two years following the passage of this ordinance, a net income of only $72,285,—or only $36,142 per annum. (Complainant's Exhibits 3 and 11, pages 402-404.) The latter amount is also subject to considerable deduction, on account of the fact that, after the passage of this ordinance, complainant constructed (p. 84) a new canal, at a cost of $85,877.82, by which new land was brought under irrigation, and the income thereby increased.

It is therefore beyond question that this ordinance denies to complainant the rights granted to it by the Act of 1862.

2. The Board of Supervisors acted on the theory that the present value of complainant's canal and works, as measured by what it would now cost to replace them, was the sole matter to be considered in fixing the rates; and it therefore did not at all take into consideration the original cost. The facts in that regard are these:

The testimony before the Board as to the cost of replacement, showed it to be $312,358.

The original cost was proved before the Board, without contradiction, to have been, as we have stated, not less than $798,429.61; and there was no evidence or claim that that amount was in any way extravagant or improper.

The Board, without other evidence, determined the value to be $337,000.

These facts are shown by the stipulations at pages 457 and 459, and the testimony of the witness Goodwin at pages 187 *et seq.*

These facts justify the finding of the court below (p. 50) that the Board of Supervisors did not give any consideration to the original cost of these works, and therefore none to the capital invested under the Act of 1862. Whether or not the Board was bound to take that matter into consideration, apart from the Act of 1862, is a question which we shall discuss under another head. It is sufficient to say here that, if we are correct in saying that the Act of 1862 created a binding contract, which has not been lawfully

repealed or amended, the Board was bound to fix the rates according to the capital so invested. As it wholly disregarded that duty, its action was not due process of law.

III.

THE COMPLAINANT IS NOT ESTOPPED FROM INSISTING ON ALL THE PROVISIONS OF THE ACT OF 1862.

The court below held that the provisions of the third section of the Act of 1862 constituted a contract, the obligation of which the State was not competent to impair, and that, indeed, the Act of 1885 was in no respect inconsistent with those provisions. (Pp. 44-46.) But that court further held (pp. 50-51) that, while the complainant was entitled to the benefit of so much of the Act of 1862 as made the capital actually invested the basis for fixing rates, it had, by its conduct, waived the right to an income of one and one-half per cent. per month. That view was based on the fact that, for more than twenty-five years, complainant had fixed its own rates, which were at no time so high as to yield that amount of income. We submit that this view of the law is not a correct one.

This question was considered by this Court in *Lake Shore etc. Ry. Co.* v. *Smith,* 173 U. S. 684, and decided in favor of our position. In that case the Court held that an act of the legislature compelling the company to sell certain thousand-mile tickets was, for certain reasons, unconstitutional. It was claimed on behalf of the State that the company, by its own action in voluntarily selling such tickets, was estopped from objecting to the statute. The Court said (p. 697):

"It is no answer to the objection to this legislation to say that the company has voluntarily sold thousand-mile tickets good for a year from the time of their sale. *What the company may choose voluntarily to do furnishes no criterion for the measurement of the power of a legislature. Persons may voluntarily contract to do what no legislature would have the right to compel them to do.* Nor does it furnish a standard by which to measure the reasonableness of the matter exacted by the legislature. The action of the company upon its own volition, purely as a matter of internal administration, and in regard to the details of its business which it has the right to change at any moment, furnishes no argument for the existence of a power in a legislature to pass a statute in relation to the same business imposing additional *burdens* upon the company."

The case of *Los Angeles* v. *Los Angeles City Water Co.*, 177 U. S. 558, presented this question in a much stronger form than in the present case. The company there relied upon a contract precisely similar to the one on which we are now relying. Notwithstanding that contract, the city, in seventeen successive years, passed ordinances fixing lower rates than those to which the company was entitled under the contract. The company collected the rates so fixed, without attempting to resist the ordinances. Finally, the company contested an ordinance passed in the eighteenth year, on the ground that it was a violation of the contract. The Court said (p. 579):

"Acquiescence in a regulation which, all things considered, may not have been injurious, does not preclude a contest of that which is injurious. It must be remem-

> bered that the contract did not forbid all regulation, but only regulation beyond a certain limit. There was no concession of a power to go beyond that limit, but constant protest against it; and when its exercise did go beyond that limit, producing injury not balanced by other considerations, the right to restrain it would naturally be, and, we think, could legally be, exerted."

The present case is much more favorable to complainant. This is the first time that the Supervisors have attempted to fix or regulate complainant's rates at all; and complainant at once proceeded, by this suit, to restrain the enforcement of the ordinance, as violative of the contract. We submit that, under such circumstances, complainant's rights have in no way been affected by its past voluntary action, based upon lenity toward its consumers, or other business reasons.

Before leaving this point, we desire to state explicitly the attitude of complainant as to the Act of 1862. The rates established and, before this ordinance, collected by complainant, are capable of yielding an income of only about six per cent. per annum on the investment. Yet complainant has no desire to raise those rates, and will be entirely satisfied with rates yielding six per cent. But this ordinance undertakes to reduce the rates to so low a point that, as we shall show under the next head, the gross revenue of complainant will most probably be insufficient to pay the necessary running expenses, and cannot, by any possibility, yield a net income of more than one and one-half per cent. per annum on the lowest possible estimate of the investment. To such a reduction we will never submit, if there is any legal redress possible. In order that such unjust and confiscatory

rates shall not be imposed on us, and only for that purpose, we insist on our rights under the Act of 1862. We shall not, in the future, any more than in the past, voluntarily fix rates yielding more than six per cent. But if, in order to prevent the State from compelling us to accept *less,* it is necessary to insist upon our legal *right* to receive eighteen per cent., then we must do so, however reluctantly, by every lawful means within our power.

IV.

EVEN INDEPENDENTLY OF THE ACT OF 1862, THE RATES FIXED BY THE ORDINANCE IN QUESTION ARE SO LOW AS NOT TO AFFORD TO COMPLAINANT ANY JUST COMPENSATION, OR, INDEED, ANY COMPENSATION.

In considering this question, it will be seen that there are two important particulars in which this case differs from any other which has been decided by this Court; and those matters should first receive attention.

1. One question which has always presented great difficulty, and which, we think, has never yet been authoritatively answered, is whether a court is competent to decide how small a compensation can be allowed, under the power to regulate rates, without violating constitutional requirements. Some learned and experienced judges have suggested that the rate of interest on money is a matter subject to legislative discretion, and that, therefore, in the absence of legislative action, it may be impossible for a court to say what would be the lowest reasonable rate. Some judges

have even gone so far as to say that the judicial function, in this class of cases, is exhausted when it is once ascertained that *some* compensation, however small, has been allowed. In the present case, however, that question cannot arise.

The legislature of California has, by a general law, (*Cal. Civil Code,* § 1917,) fixed the lawful rate of interest, in the absence of express contract, at seven per cent. per annum. Section 5 of the Act of 1885, before referred to, (*Cal. Stats.* 1885, 95,) in authorizing the Board of Supervisors to fix annual water-rates, expressly directs that "said rates shall "be equal, reasonable, and just, both to such * * *cor- "porations and to said inhabitants," and that the Board shall, as near as may be, so fix them "that the net annual "receipts and profits shall be not less than six nor more than "eighteen per cent."

By this legislation, which is the only authority to the Supervisors to fix rates at all, the legislature has enacted that six per cent. is the lowest rate of compensation which would be reasonable and just. That enactment is conclusive on the question, at least as against the State and the County; and we submit, therefore, that any rates fixed by the Supervisors which will not allow of substantially that income, do not give the compensation which the Constitution requires.

2. In another particular, a great practical difficulty has been experienced in this class of cases, though the *law* on the subject is well settled. It is beyond question that the reasonableness of any given rate is to be determined, not merely by ascertaining what would be proper in view of the situation of the company, but by considering also what

would be just to the consumers. A rate which would afford to the company no more than a fair return for the use of its property, might yet be greater than the consumers could reasonably afford to pay. Indeed, it has even been suggested that there may be circumstances in which the company would not be constitutionally entitled to any compensation whatever, in view of the inability of the members of the public to pay a rate which would allow any compensation. However that may be, it is settled that the rate should be reasonable as to the consumers, as well as to the company. This principle has necessarily caused great difficulty, in many of the cases, in determining whether a given rate is, in fact, reasonable or otherwise; but that difficulty does not exist in the present case. If such a thing can ever be established by evidence, it was proved beyond contradiction, in this case, that the rates established by complainant, and which the Supervisors are now seeking to reduce, are entirely reasonable to the consumers,—indeed, that they could well afford to pay much higher rates.

The testimony on that subject was as follows:

The defendants produced the testimony of five persons, (pp. 254-5, 264, 273-4, 285, 294-5,) who stated that, *in their opinion,* the rate of $2.50 per acre per annum for the irrigation of alfalfa, which was the rate charged by complainant, was more than the farmers could afford to pay. Neither of these witnesses testified to any *fact* whatever in support of his opinion; and complainant seasonably objected to that testimony, on the ground that it was a mere conclusion, which could be drawn only by the court from the whole evi-

dence, and to which no witness could be permitted to testify. We still insist on those objections.

On the other hand, complainant called twelve witnesses, all of whom were farmers engaged in raising alfalfa, and consumers of water from plaintiff's canal, and five of whom had signed the petition to the Supervisors for a reduction of complainant's rates, in response to which petition the Supervisors had passed the ordinance in question. These witnesses testified as to the *facts* showing the usual and ordinary profits realized from the cultivation of alfalfa, irrigated from complainant's canal, and paying the rate of $2.50 so charged by complainant. They stated, in detail, the items of expense, the amount of crops produced, the prices obtained for those crops, and everything necessary to determine this question. This testimony will be found at pages 314 to 325, 327 to 338, 339 to 341, 342 to 357, 361 to 377. It was substantially accordant, and showed an average net profit in raising alfalfa, paying complainant's full rate, of $20.54 per acre per annum, or over 20 per cent. per annum on $100, the highest price per acre which defendants claimed that the land cost.

In order to present this testimony to the Court in a compact form, we here insert the following tabular statement of it, which we presented to the court below:

Annual Profit in Raising Alfalfa.

Witness.	Cost of putting in crops per acre.	Cost of annual maintenance per acre.	Annual cost of applying water.	Cost of harvesting, etc., per ton.	Average crop in tons per acre.	Average price per ton.	Value of extra pasturage per acre per annum.
Nicholas Bibby	$ 5 00	$.....	$0 75	$ 0 87½	9	$.....	$.....
C. W. Wood	10 00	0 00	0 10	1 00	7½	.....	1 00
Geo. A. Fink	.....	1 00	.....	1 00	8	4 00	.....
Chas. H. Fink	.....	.....	0 15	0 87½	7	4 50	.....
S. O. Crittenden	7 50	0 25	.....	1 00	.....	.....	.....
S. A. Smith	9 00	0 50	.....	1 25	8	4 00	.....
Jno. H. Edwards	10 00	0 75	.....	1 00	8	4 00	.....
H. L. Coombs	7 00	0 37½	1 00	1 00	8	.....	.....
W. H. Devoe	.....	.....	.....	.....	7	5 00	.....
Guy Kilburn	10 00	1 00	0 75	1 00	7½	4 00	.....
E. W. Crow	6 50	1 00	0 75	1 00	.....	3 50	.....
Frank Winter	6 50	0 62½	0 50	1 00	7	4 00	1 00
	$71 50	$5 50	$4 00	$11 00	77	$33 00	2 00
	Div. by 9	Div. by 9	Div. by 7.	Div. by 11.	Div. by 10.	Div. by 8	Div. by 2
	7 94	0 61	0 57	1 00	7.7	4 12	1 00
	Div. by 10						
	0 80						

Recapitulation.

Expenses.

Cost of putting in (averaged on basis of re-seeding every 10 years)	$ 0 80
Cost of annual maintenance	0 61
Cost of applying water	0 57
Cost of water	2 50
	$ 4 48

Receipts.

7.7 tons hay at $4 12	$31 72	
less $1 per ton for harvesting	7 70	$24 02
Pasturage		1 00
Gross receipts		$25 02
Deduct expenses		4 48
		$20 54

Or 20 per cent. per annum on $100.

The explanation of that table is as follows:

In each case, we have presented the view most favorable to defendants. The first column shows the cost of preparing the land and putting in the crop. As some of the witnesses testified that this had to be done anew every ten years, we have divided the average cost by ten. At the foot of this column (as in each other column) we have shown the average of the testimony by adding the amounts together and dividing the total by the number of witnesses. The second, fourth, fifth, and sixth columns explain themselves. The third column shows the cost of irrigation,—that is, the cost of applying the water to the land,—and is exclusive of the cost of the water. The seventh column embraces the testimony of two of the witnesses, who stated that, after the removal of the crops of hay, some valuable pasturage was habitually obtained.

This tabulation is confined to the raising of alfalfa for hay; for, although most of the witnesses stated that much alfalfa is used solely for pasturage, they also stated that that was done because that course was deemed the more profitable one.

As to the cost of the land, J. T. Crow, the most intelligent of the defendants' witnesses, testified (pp. 272-3) that it would average from $60 to $70 per acre. As, however, some of defendants' witnesses put it as high as $100, we have taken that amount as most favorable to defendants, though we believe it to be much too high.

From the evidence thus outlined, it is apparent that it cannot be seriously contended that the rates established by

complainant are unreasonable to the consumers. It is certainly a matter of common experience, which a court must be presumed to know, that a net annual profit of 20 per cent. on the investment is far beyond the usual return of any ordinary kind of business; and therefore a rate which permits such a profit cannot be said to be unreasonably high. And it surely does not lie in the mouths of the defendants to make such a claim, while they are asserting that an annual return of only six per cent. on the actual investment is more than complainant is entitled to receive.

3. We are then brought to the question of what is the proper basis upon which rates may lawfully be fixed, by public authority, for a corporation of the character of complainant. In one form or another, such questions have several times been brought before this Court; but, in accordance with its traditional and wise custom, it has steadily declined to lay down general rules beyond the necessities of the particular case. Some principles, however, have been established; and these should be understood, before inquiring how far they should be applied or qualified in this case.

In *San Diego L. & T. Co.* v. *National City*, 174 U. S. 739, which is practically the latest case on the subject, the Court said (p. 757):

> "The contention of the appellant in the present case is that in ascertaining what are just rates the court should take into consideration the cost of its plant; the cost per annum of operating the plant, including interest paid on money borrowed and reasonably necessary

to be used in constructing the same; the annual depreciation of the plant from natural causes resulting from its use; and a fair profit to the company over and above such charges for its services in supplying the water to consumers, either by way of interest on the money it has expended for the public use, or upon some other fair and equitable basis. Undoubtedly, all these matters ought to be taken into consideration, and such weight be given them, when rates are being fixed, as under all the circumstances will be just to the company and to the public. The basis of calculation suggested by the appellant is, however, defective in not requiring the real value of the property and the fair value in themselves of the services rendered to be taken into consideration. What the company is entitled to demand, in order that it may have just compensation, is a fair return upon the reasonable value of the property at the time it is being used for the public. The property may have cost more than it ought to have cost, and its outstanding bonds for money borrowed and which went into the plant may be in excess of the real value of the property. So that it cannot be said that the amount of such bonds should in every case control the question of rates, although it may be an element in the inquiry as to what is, all the circumstances considered, just both to the company and to the public."

The difficulty in the present case arises from the proper application of the above words: "the reasonable value of " the property *at the time it is being used for the public.*" The defendants broadly claimed, in the court below, that that language means that the sole basis for fixing rates is the present value of complainant's canal and works, *meas-*

ured by the amount which it would now cost to replace them. On the other hand, our contention was and is that, at least in the case of a canal company in California, the proper basis is the *original actual cost* of that property, if that cost was a fair and necessary one, expended in good faith and without waste or extravagance,—deducting therefrom, if necessary, any depreciation which the property has since undergone, rendering it less fit to subserve the public use.

We submit that defendants' contention is wholly untenable; and that our position is (*a*) fully supported by general principles, (*b*) rendered necessary by complainant's position under the law of California, and (*c*) entirely consistent with the Act of 1885, under which these rates were fixed.

(*a*) In the cases in which this Court has used substantially the above language, on which the present controversy arises, it has also pointed out the reason why the *original cost* may not *always* be the test of value. Thus, in *Reagan* v. *Farmers' Loan & Trust Co.*, 154 U. S. 362, the Court (p. 412) applied the following tests:

> "That the road cost far more than the amount of the stock and bonds outstanding; that such stock and bonds represent money invested in its construction; that there has been no waste or mismanagement in the construction or operation; that supplies and labor have been purchased at the lowest possible price consistent with the successful operation of the road."

And, in speaking of cases where the fixing of unremunerative rates might be justified, the Court said:

> "There may have been extravagance and a needless expenditure of money; there may be waste in the management of the road; enormous salaries, unjust discrimination as between individual shippers, resulting in general loss."

So, in *Smyth* v. *Ames,* 169 U. S. 466, the Court said (p. 544):

> "If a railroad corporation has bonded its property for an amount that exceeds its fair value, or if its capitalization is largely fictitious, it may not impose upon the public the burden of such increased rates as may be required for the purpose of realizing profits upon such excessive valuation or fictitious capitalization."

And, as we have shown, in *San Diego L. & T. Co.* v. *National City, supra,* the Court used similar language.

The reasons so suggested by the Court are undoubtedly valid reasons, and, we submit, the only valid reasons for rejecting, in any particular case, the original cost as the basis upon which rates ought to be fixed, if otherwise fair to the public. In each of those cases, the Court expressly held that the original cost was one of the things which must be "considered" in fixing rates; and we are unable to understand how a body, exercising functions which are, in substance if not in form, judicial, can be required to consider a matter which it is authorized to arbitrarily reject in making up its decision.

We therefore submit that the decisions of this Court are entirely consistent with, if they do not even necessarily lead

to, the conclusion that, subject to fairness to the consumers, the rates should be so fixed as to allow a reasonable income on the money actually expended in construction, *unless* that amount of money was extravagantly or unnecessarily, or fraudulently expended.

(*b*) But, however this may be as to some corporations, justice imperatively demands that such should be the rule in the case of a canal company under the law of California.

We have already, under another head, called attention to that law, and the situation of a canal company thereunder; and it will be sufficient here to quote from the case there referred to,—*San Diego Water Co.* v. *San Diego,* 118 Cal. 556. In that case, an opinion was written by Justice Van Fleet, and concurred in by Justices Henshaw and McFarland. Each of the other four members of the court filed a separate opinion, in which a different conclusion was reached as to certain matters. But neither of those latter opinions questions the correctness of the statement, in the opinion of Justices Van Fleet, Henshaw, and McFarland, of the California law as to water companies; and that opinion is therefore authoritative on that point. As, however, the conclusion reached in that opinion was not concurred in by a majority of the court, that opinion can not be regarded as an authority in support of that conclusion. But we submit that the reasoning of that opinion is unanswerable; and, as the other members of the court did not attempt to answer or criticize that reasoning in any way, but contented themselves with stating their own conclusions, without giving their reasons in support of them, we think we may, not im-

properly, suggest that that opinion expresses the only view consistent with justice and constitutional principles. As the question is one arising under the Constitution of the United States, decisions of a state court are not binding on this Court, and should be weighed only according to the intrinsic value of the reasons brought forward in their support.

We therefore quote here so much of that opinion as relates to that subject,—not, as we have said, as authority, but as expressing what we believe to be the true rule on the subject:

> "This brings us, then, to the question whether the findings support the judgment. They show that the total receipts of the plaintiff from the rates fixed by the council would be and were insufficient to pay plaintiff's actual and necessary operating expenses, together with the interest on so much of its bonded indebtedness as was necessarily and properly expended by it in the construction of its plant, necessarily and actually used for the supplying of the water here in question—indeed, would fall short more than $11,000 of paying those charges. No circumstances requiring such a loss were found, and the finding that these actual charges were necessarily and properly incurred in the legitimate exercise of the business of furnishing water to the city negative the existence of any such circumstances. It is clear that under the rule laid down by the supreme court of the United States in *Reagan* v. *Farmers' Loan etc. Co.*, 154 U. S. 362, 412, that court would hold those rates to be so unreasonable and unjust as to require the court to set them aside. The decision in that case, however, is not in all respects satisfactory; and, after a careful examination of all the many cases on this subject,

we are unable to discover that any consistent or adequate rules controlling the exercise of the governmental power of fixing rates have yet been judicially laid down. The subject is one of extreme complexity, and its inherent difficulties have been increased rather than diminished by the numerous decisions in which it has been discussed. We think, however, that a consideration of the real nature of the power conferred by our constitution will afford a sufficient solution of the question.

"It is apparent that the water company does not own the water which it collects and supplies, or the plant which it uses to collect and distribute that water, in the same sense in which a man is said to own his house or his farm. By the very nature of the use to which it is applied, the company has devoted that property to a public use. Having once undertaken to perform that public duty, it must continue to perform it, and must carry on its business under the lawful regulations of the government. In effect the state may be said to have appropriated the water and the plant to public use. For that appropriation it is bound to make just compensation, and it has provided for such compensation by requiring the municipal authorities to fix just and reasonable rates at which the water is to be furnished to and received by the consumers. Since the state has 'taken' the use of this property, it is bound to provide a just compensation for that use, and article XIV of the constitution must be construed as providing for that just compensation.

"The question of what is just compensation in such a case is, we think, in all respects analogous to the question which arises in every case of appropriation under the power of eminent domain; and it may be reduced to

the formula that the public must pay the actual value of that which it appropriates to the public use. In determining such value three, and we believe only three, methods are possible: 1. Either by ascertaining what the property could be sold for (its market value); or 2. By ascertaining what it would cost to replace it; or 3. By ascertaining the revenue it is capable of producing. In cases like the present, however, neither the first nor the second method can be resorted to. The judicial test of market value depends upon the fact that the property in question is marketable at a given price, which in turn depends upon the fact that sales of similar property have been and are being made at ascertainable prices. But such property as this is not so sold, at least, not often enough to furnish a fair criterion; and the very fact of governmental regulation would necessarily control the price. Until the rates are fixed no one can say how much the property would sell for, and therefore that price cannot be ascertained as a basis for fixing those rates.

"The second method is entirely inapplicable to property of this kind. The construction of municipal waterworks is a matter of growth. It is necessary in common prudence, on the one hand, to construct the works of such capacity as to satisfy the needs of the growing city, not only at the moment, but within the near future; and, on the other hand, not to extend them so much as to cast an unnecessary burden on the stockholders, or the present consumers. As such works are a necessity to the city, they must keep pace with, and to some extent anticipate, its growth. When constructed they stimulate to that extent the progress of the city, and tend, like all conveniences, to lower the general cost of production of all things. It results that at least the first water

system in any city occupies the position of a pioneer. At any expense the works must be constructed, and usually no reward can be realized by the constructors until some time has elapsed. In the mean time, as the city grows, in part by reason of this very supply of water, the facility of constructing works of all kinds is increased, and the cost of such construction diminished. It would, therefore, be highly unjust to permit the consumers to avail themselves of the plea that at the present time similar works could be constructed at a less cost, as a pretext for reducing the rates to be paid for the water. The reduced expense, if it be reduced, is due in part at least to the very fact that the city has been provided at the cost of the water company with increased facilities for doing business.

"But it is said that those who enter upon any business enterprise undertake the risk of being undersold by those who, coming later into the field, have the advantage of a cheapening of construction. But this is not an ordinary business enterprise. Those who engage in it put their property entirely into the hands of the public. Having once embarked it is beyond their power to draw back. They must always be ready to supply the public demand, and must take the risk of any falling off in that demand. They cannot convert their property to any other use, however unprofitable the public use may become. They have expended their money for the benefit of others, and subjected it to the control of others. That money has, in effect, been taken by the public; and the public, while refusing to return that money, cannot be heard to say that it no longer has need for all of it.

"Nor would it, on the other hand, be just to the consumers to require them to pay an enhanced price for the

water, on the ground that it would now cost more to construct similar works. Such a contingency may well happen; but to allow an increase of rates for such reason would be to allow the water company to make a profit, not as a reward for its expenditures and services, but for the fortuitous occurrence of a rise in the price of materials or labor. The law does not intend that this business shall be a speculation in which the water company or the consumers shall respectively win or lose upon the casting of a die, or upon the equally unpredictable fluctuations of the markets. For the money which the company has expended for the public benefit it is to receive a reasonable, and no more than a reasonable, reward. It is to be paid according to what it has done, and not according to what others might conceivably do. In effect, the bargain between the company and the public was made when the works were constructed; and this matter is to be determined according to the state of things at that time.

"We must then have recourse to the third standard of value—the revenue which the property is capable of producing. At the first blush there might seem to be a difficulty in applying this standard, for the revenue received by the company will be absolutely controlled by the rates fixed, and no revenue can be collected except upon rates so fixed. This difficulty has led one of the counsel in this case, in a singularly able and ingenious argument, to contend that the rates must be so fixed as to enable the company to obtain precisely the revenue which it would realize if the rates were not regulated by the public at all. To this proposition we cannot assent. The whole history of municipal regulation conclusively shows that its principal purpose was always to diminish what were rightly or wrongly believed to be

exorbitant charges. The theory of its application has always been that it is necessary to restrain the proprietors of what have been called 'virtual monopolies' from imposing extravagant and unreasonable tariffs for the use of their facilities. Whether the system be well conceived or not, whether it accords with the theory of free government, are not questions with which we have to do. It is sufficient that the law recognizes that there is a standard by which just compensation may be measured, and that it is intended to prevent that measure from being exceeded.

"What that standard is, as applied to the present case, we think not difficult of ascertainment. As we have said, it is not the water or the distributing works which the company may be said to own, and the value of which is to be ascertained. They were acquired and contributed for the use of the public; the public may be said to be the real owner, and the company only the agent of the public to administer their use. What the company has parted with, what the public has acquired, is the money reasonably and properly expended by the company in acquiring its property and constructing its works. The state has taken the use of that money, and it is for that use that it must provide just compensation. What revenue money is capable of producing is a question of fact, and, theoretically at least, susceptible of more or less exact ascertainment. Regard must be had to the nature of the investment, the risk attendant upon it, and the public demand for the product of the enterprise. It would not, of course, be reasonable to allow the company a profit equal to the greatest rate of interest realized upon any kind of investment, nor, on the other hand, to compel it to accept the lowest rate of remuneration which capital ever obtains. Comparison

must be made between this business and other kinds of business involving a similar degree of risk, and all the surrounding circumstances must be considered. An important circumstance will always be the rate of interest at which money can be borrowed for investment in such a business; and, where the business appears to be honestly and prudently conducted, the rate which the company would be compelled to pay for borrowed money will furnish a safe, though not always conclusive criterion of the rate of profit which will be deemed reasonable. In ordinary cases, where the management is fair and economical, it would be unreasonable to fix the rates so low as to prevent the company from paying interest on borrowed money at the lowest market rate obtainable; and, even then, some allowance or margin should be made for any risk to which the company may be exposed, over and above the risk taken by a lender.

"This being so, the existence of the bonded indebtedness on which so much stress has been laid, and which has seemed to present so difficult a problem in some of the cases, must be disregarded. That fact, indeed, it seems to us, can never be important, except as entitling the holders of the bonds, as parties in interest, to be heard in actions like the present. Evidently, no distinction can be made between those who construct the works with their own money and those who do so with money borrowed from others. In either case the money actually invested is the basic criterion of the revenue to be allowed. * * *

"It should, of course, be said that it does not follow that in every case the company will be entitled to credit for all of its current expenditures, or to receive a compensation based on the entire cost of its works. Reckless and unnecessary expenditures, not legitimately in-

curred in the actual collection and distribution of the water furnished, or in the acquisition, construction, or preservation of so much of the plant as is necessary for that purpose, cannot be allowed. Nor can the investment on which the company is entitled to base its compensation be held to include property not now actually employed in collecting or distributing the water now being supplied, however useful it may have been in the past, or may yet be in the future. It is the money reasonably and properly expended in each year in collecting and distributing the water which constitutes the current expenses which may be allowed; and it is the money reasonably and properly expended in the acquisition and construction of the works actually and properly in use for that purpose, which constitutes the investment on which the compensation is to be computed."

We do not care to add anything to the reasoning contained in that opinion, but submit it as our argument on this point.

(*c*) The view for which we are contending is entirely consistent with the provisions of the act of 1885. This is sufficiently shown in the opinion of the court below (pp. 44-5); to which we will merely add that, even if that act is capable of another construction, the former should be adopted, as most consonant with justice and, therefore, with the presumed intention of the legislature.

V.

EVEN IF THE AMOUNT FIXED BY THE SUPERVISORS SHOULD BE TAKEN TO BE THE TRUE VALUE OF COMPLAINANT'S PROPERTY, YET THE RATES FIXED BY THE BOARD WILL ALLOW NO JUST COMPENSATION EVEN UPON THAT VALUATION.

In this case, we have the advantage of the fact that more than two years elapsed after these rates were fixed, before the taking of the testimony; and we were therefore able to lay before the court the actual result of the operation of these rates, so far as they were in operation.

On the other hand, however, a most serious difficulty arises here, which has never before arisen in any case. Section 2 of the act of 1885 reads as follows:

> "The several Boards of Supervisors of this State * * * are hereby authorized and required to fix and regulate the maximum rates at which any * * corporation, having or to have appropriated water for sale, rental, or distribution, in each of such counties, may and shall sell, rent, or distribute the same."

Complainant's canal heads in the County of Fresno, where it diverts its water from the San Joaquin River; and it thence runs, through the Counties of Fresno and Merced, into the County of Stanislaus,—a distance of about 70 miles. In each of those counties, complainant supplies water, from this canal, to a large number of consumers. The rates in question were fixed by the Board of Supervisors of Stanis-

laus County, and applied only to water furnished to consumers in that county.

It is very doubtful whether this act applies to such a canal as this; and that question has never been decided. As it is a question which ought, if possible, to be first decided by the courts of the state, we shall assume, merely for the purposes of this argument, that that act was intended to apply to such cases.

But, in order that that act could constitutionally so apply, it would be necessary that its provisions should be such as to enable justice to be done in cases such as this. For that end, this act provides no machinery whatever; and, indeed, there is nothing in the act to indicate that such a case as this was within the contemplation of the legislature. If this act does apply to such a case, then the Board of Supervisors of each of these counties is authorized to fix the rates for water supplied from this single canal, in its county, and only in its county. It follows that different rates may be established in and for these different counties,—indeed, as we shall show, different rates ought to be so established. But, as complainant's business is necessarily a unit, the reasonableness of any one of these rates cannot be determined without considering also the rates in the other counties.

When the rates here in question were fixed for Stanislaus County, the Supervisors of Fresno and Merced Counties had not fixed any rates,—indeed, have not yet fixed any, doubtless awaiting instruction from this Court as to the law. Therefore the rates originally fixed by complainant itself prevailed in the latter counties during the period we

have mentioned, while, in Stanislaus County, complainant was limited to those so fixed by the Supervisors of that county.

If the rates for complainant's whole canal were fixed by a single body and at one time, there would be no difficulty in ascertaining the facts as to the operation of those rates. But where, as here, the rates have been fixed in only one county, it is not possible to do that, without some assumption as to the rates to be fixed in the other counties. The reasonableness of the rates already fixed in the one county cannot be affected by what may *actually* be done hereafter in the other counties; and yet each of the other counties may, at any moment, fix rates, which, when taken together with those already fixed in the third county, may produce an unreasonable result.

For these reasons, we think that this act does not furnish such a method as would protect the constitutional rights of such a company, and is, therefore, not due process of law as to it.

There is, however, one, and, we think, only one, way in which this act might be reconciled with constitutional requirements. If we should assume that the Supervisors of Fresno and Merced Counties will fix such rates as they ought to fix, in justice to their inhabitants as well as to the company, we could then examine the rates now in question, in connection with those assumed rates, and then ascertain what would be the result of those rates in actual operation. If such an assumption is not permissible, then we think that the act is, for the reasons suggested, unconstitutional.

We will, then, see what the result would be in this case on such an assumption.

It is, of course, perfectly fair to assume that the Supervisors of these other counties will fix the rates as low as they lawfully can. Without at all impeaching their good faith and uprightness, we cannot forget that the consumers are their constituents, and that they may be, as is often the case, consumers themselves. It is not to be presumed that they would be any more liberal toward complainant than the Supervisors of Stanislaus have been; and we therefore have a right to suppose that, in the absence of any authoritative judicial decision to the contrary, they would not fix the rates any *higher* than those now under consideration. Indeed, the defendants themselves, in the court below, discussed the case solely on that theory; and they considered that they had established their case when they showed (what is true) that these rates, if applied to all three of the counties, would allow complainant an income of substantially six per cent. on $337,000, the amount fixed by the Supervisors as the value of complainant's plant. But while, as we have said, we may justly presume that *higher* rates would not be fixed in those counties, it by no means follows that we have not an equal right to presume that those rates would be *lower,* if there is any legal reason why they should be lower. We believe that we can show, beyond question, that, in law and justice, the rates in the counties of Fresno and Merced *ought* to be lower than those in the county of Stanislaus. If so, we cannot suppose that the Supervisors will be so unmindful of the interests of their constituents as

not to give them the benefit of the distinction to which they are so entitled.

The evidence in this case shows that the value of the works used and useful in supplying water to the inhabitants of Stanislaus County, and the cost of their maintenance and operation, are much greater than is the case of the other counties. That being so, the rates in those counties ought to be, and presumably will be, proportionally lower than those in Stanislaus County. The evidence shows that, if such rates should be so established, complainant's gross income would be less than the necessary cost of maintenance and operation; and that, even on the most favorable theory which defendants can suggest, complainant's net annual income could not possibly exceed 3 $^{6}/_{10}$ per cent. on $337,000.

The facts shown by the evidence applicable to this question are as follows:

The canal of complainant was, in 1874, constructed from its head in Fresno County to Los Banos Creek in Merced County, a distance of 38½ miles. (P. 69.) In 1878, an extension of the canal, called Extension A, was constructed to Orestimba Creek in Stanislaus County, a distance of 29 miles. (Pp. 70-71.) This extension was constructed (at complainant's cost) on the urgent request of farmers living along its route. (Exhibits 18, 19, 20, 21, pp. 391-396.) In 1881, a further extension of 3¾ miles in Stanislaus County, was also constructed at the expense of complainant. It is called Extension B, and brings the canal to its present terminus. (Pp. 70-71.)

Complainant also constructed, in 1879, 1883, and 1885,

three "Parallel Canals," forming a continuous canal 27 miles in length. That canal is constructed on the lower side of the main canal,—the lower bank of the main canal forming the upper bank of the parallel canal,—and its purpose is to enable water to be supplied to the consumers in Stanislaus County, while water is, at the same time, being supplied to consumers in Fresno and Merced Counties. (Pp. 70-71.)

A branch canal, called the "Dos Palos Branch" was constructed in 1894 in Fresno and Merced Counties, which supplies water only in those counties. (P. 71.)

A map of this system of canals will be found between pages 462 and 463 of the transcript. On that map, the direction of the flow of water is from right to left.

The lengths of the different parts of the canal supplying water to Stanislaus County, according to the answer and defendant's witness Goodwin, (which is the view most favorable to defendants,) are as follows (pp. 17, 187):

Whole length of canal	97.94	miles
Length of main canal	71.17	"
" " parallel canal	26.77	"
" in Stanislaus County	11.70	"

The value of these canals is substantially uniform throughout their entire length, and the value of the parallel canal is 0.182 of the whole. (Testimony of C. E. Grunsky, omitted in printing.)

The average number of acres irrigated in Stanislaus County is 7,658, and in all the counties taken together, 40,533. (Pp. 325-6 and Ex. 11, pp. 402-444.)

In the operation of this great length of canal through an arid and porous country, there is a great loss of water by evaporation and seepage; so that, of any given quantity of water turned into the canal, only 0.75 can reach a consumer in Stanislaus County, and, on an average, only 0.875 can reach one in Fresno and Merced Counties. (Pp. 116-122.)

With these facts known, we submit that it is easy to determine, under the act of 1885, what should equitably be the proportional rates as between these different counties; and, on the principle that equity will consider that as done which ought to be done, we are entitled to examine the results of the rates which have actually been fixed in Stanislaus County, on the assumption that the rates in the other counties will bear toward them a due proportion.

The basis on which water-rates are directed, by the act of 1885, to be fixed, is "the value of the canals * * * "and all other property actually used and useful to the "appropriation and furnishing of such water." In fixing these rates in any one county, it is obvious that only those portions of the canal and works which are actually used and useful in furnishing water *to that county* can be taken as the basis for those rates. It follows, then, that, in fixing rates for either Fresno or Merced County, that portion of the canal lying in Stanislaus County can not be considered, for it is neither used nor useful in supplying water in either of the former counties. In adjusting the proportional rates, as between the three counties, the method of fixing the basis is obviously, therefore, to charge the lowest county with the whole of that part of the canal which lies within that

county, and with a ratable proportion of the part lying in the counties above it. It should be charged with the whole of the portion solely within it, because that portion is used wholly for its benefit; and it should be charged with some proportion of the canal above it, because the latter is used partly, but not entirely, for its benefit.

The only equitable method of determining the proportion of the canal in the upper counties, which should be charged to the lower county, is to ascertain the relative use made of the canal by each county; which can only be in proportion to the quantity of water used by each. As the rates here in question are fixed at a certain price per annum for each acre irrigated, the proportion between the counties will therefore be according to the relative number of acres irrigated in each.

But, in fixing such rates, the relative loss of water should also be considered. For every cubic foot of water delivered in Stanislaus, it is necessary to turn into the canal 1.33 feet; while, to supply one foot in Fresno or Merced, only 1.14 feet, on an average, need be turned in. In other words, every acre irrigated in Stanislaus requires that much more water than is required to do the same work in the other counties.

From these considerations, it is evident, at a glance and without any calculation, that the rates in Fresno and Merced must be proportionally very much lower than those in Stanislaus. That is sufficient for our case; for, since the rates now in question, if applied *equally* to all three counties, can afford to complainant a net return of only six per

cent. per annum on the value fixed by the Supervisors, which is the least return guaranteed us by the Act of 1885, any material deduction from those rates in the other counties will unlawfully deprive us of that return.

Nevertheless, in order to put this matter beyond doubt, we calculated what, on this evidence, these proportional rates should be, on every assumption or theory that can be suggested; and we now present to the Court those calculations, which were also presented to the court below. In making those calculations, for convenience and as the result in this case would be the same, we have treated Fresno and Merced counties as one, and have thus calculated what the rates in those counties would be on an average.

In order that every theory should be considered, we have prepared four calculations, each based on a different assumption. In calculation 1, we have assumed that the entire parallel canal should be charged to Stanislaus, and have taken no account of the loss of water. Calculation 2 is made on the same assumption, but taking account of the loss of water. In calculation 3 we have assumed that the value of the parallel canal is to be apportioned between the three counties in the same manner as the main canal, and we have not considered the loss of water; while in calculation 4, made on the same assumption, the loss of water has been allowed for.

Those calculations are as follows:

"COMPLAINANT'S CALCULATIONS OF THE AVERAGE RATE FOR IRRIGATION PER ACRE WHICH SHOULD PREVAIL IN FRESNO AND MERCED COUNTIES, (CONSIDERED TOGETHER,) IF THE RATE IN STANISLAUS COUNTY WERE FIXED AT $1.50 PER ACRE, AND OF THE PROFITS TO BE REALIZED BY COMPLAINANT AT THOSE RATES.

These calculations are made upon the following assumptions:

1. That, on an average, 40,533 acres are irrigated from complainant's canal, of which 7,658 are in Stanislaus County.

(The number of acres irrigated in Stanislaus County was as follows:

In 1896,	Orestimba Section	6,441	
	Las Garzas "	96	6,537
" 1897,	Orestimba Section	6,278	
	Las Garzas "	123	6,401
" 1898,	Orestimba Section	9,865	
	Las Garzas "	170	10,035

and the total number of acres irrigated in the three counties was as follows:

In 1896	37,311
" 1897	37,132
" 1898	47,155)

2. That the number of miles of canal is as follows:

Whole length of canal	97.94	miles
Length of main canal	71.17	"
" of parallel canal	26.77	"
" in Stanislaus County	11.70	"

3. That the value of the main canal per mile is uniform throughout its entire length, and that the value of the parallel canal is 0.182 of the whole.

4. That, of each cubic foot of water flowing into the head of the canal, only 0.75 reaches the consumers in Stanislaus County, and, on an average, only 0.875 reaches the consumers in Fresno and Merced Counties.

5. That, as between the different counties, (Fresno and Merced being averaged together for convenience,) the relative rates should be based upon the principle that each should pay according to the relative cost of delivering the water, as follows:

(a)—The consumers in Stanislaus County should be charged with the entire cost of constructing and maintaining the canal in that county, with the entire cost of constructing and maintaining the parallel canal, and with such a proportion of the cost of constructing and maintaining that portion of the main canal in the other counties as the irrigated acreage in Stanislaus County bears to the total irrigated acreage; and only the remainder of the cost should be charged to the consumers in the other counties;

or (b)—The cost should be charged as in (a), except that the cost of the parallel, instead of being charged wholly to Stanislaus County, should be apportioned in the same man-

ner as that portion of the main canal in Fresno and Merced Counties;

and (c)—The rates should be in inverse proportion to the amounts of water respectively received and not lost.

Of the following calculations, numbers one and two are based upon assumption 5 (a), and numbers three and four upon assumption 5 (b). In numbers two and four, account is taken of assumptions 4 and 5 (c), in the others not.

CALCULATION I.

Of the total number of acres irrigated, the amounts in the respective counties bear the following decimal proportions:

In Stanislaus County	0.189
" Fresno and Merced	0.811
	1.000

The total length of canal being 97.94 miles, and the cost of the parallel being 0.182 of the whole, the equivalent value of the parallel will be 17.82 miles.

The number of miles solely chargeable to Stanislaus County, and the number of miles to be apportioned between the different counties, will then (on assumption "a") be as follows:

Mileage belonging to Stanislaus alone	11.70 + 17.82 = 29.52
Mileage to be apportioned between all counties	71.17 — 11.70 = 59.47
Total	88.99

Or in the following decimal proportions:

To Stanislaus 0.332
" all counties 0.668
1.000

The share chargeable to Stanislaus of the canal in the other counties, on assumption "a", is:

$$0.189 \times 0.668 = 0.126252$$

The total share of Stanislaus is therefore:

$$0.332 + 0.126252 = 0.458252$$

And of the other counties:

$$0.811 \times 0.668 = 0.541748$$
$$1.000000$$

In other words: The consumers in Stanislaus, taken collectively, should be charged with 0.458252 of the whole cost, and those in the other counties, taken collectively, with 0.541748.

The relative rates per acre are determined by dividing the foregoing figures by the respective acreage proportions, as follows:

For Stanislaus ..... $\frac{0.458252}{0.189} = 2.425$

" Fresno and Merced. $\frac{0.541748}{0.811} = 0.668$

If then, the rate in Stanislaus should be $1.50 per acre, the rate -R- in the other counties, taken together, will be determined by the following proportion:

$$2.425 : 0.668 :: \$1.50 : R$$
and $R = \$0.41$

At these rates, the gross receipts would have been as follows (Ex. 11):

In 1897,	6,401 acres at	$1.50	
	30,731 " "	$0.41	.... $22,201.
In 1898,	10,035 " "	$1.50	
	37,120 " "	$0.41	.... 30,271.
			$52,472.

And, (Ex. 3,)

Cost of maintenance in 1897 ...	$19,940.87	
" " " " 1898 ...	29,526.51	49.467.

Net receipts for the two years..... $3,005.
Average per year ..... $1,502.
Or less than one-half of one per cent. on $337,000.

CALCULATION II.

The foregoing calculation shows that, disregarding the loss of water, the rates in the different counties should bear the following proportions:

Stanislaus 2.425
Fresno and Merced c.668

These rates should be increased in proportion to the loss of water, according to the following proportions:

0.75 : 1 :: 2.425 : 3.233
0.875 : 1 :: 0.668 : 0.763

Then, with $1.50 as the rate in Stanislaus, the rate in the other counties will be:

3.233 : 0.763 :: $1.50 : $0.35

At these rates, the gross receipts would have been as follows:

In 1897	$20,357.
" 1898	28,044.
	$48,401.
Cost of maintenance as above	$49,467.
Net *deficiency* for the two years	$ 1,066

CALCULATION III.

If we proceed in accordance with assumption "b", calculation one will be modified as follows:

Mileage chargeable to Stanislaus	11.70
" " " all counties	
71.17 + 17.82 − 11.70 =	77.29
Total	88.99

Or in the following decimal proportions:

To Stanislaus	0.131
" all counties	0.869
	1.000

Then the share of Stanislaus will be:

$$0.131 + (0.189 \times 0.869) = 0.295241$$

And of the other counties:

0.811 × 0.869 =	0.704759
	1.000000

Then the rates per acre will be:

For Stanislaus ..... $\frac{0.295241}{0.189} = 1.562$

" Fresno and Merced. $\frac{0.704759}{0.811} = 0.869$

And, at $1.50 in Stanislaus, the other rate will be:

1.562 : 0.869 :: $1.50 : $0.83

At these rates, the gross receipts would have been as follows:

In 1897	$35,113.
" 1898	45,862.
	$80,786.
Maintenance as above	49,467.
Net receipts for the two years...	$31,319.
Average per year	$15,659.

Or 4 $^{6}/_{10}$ per cent. on $337,000.

CALCULATION IV.

Applying the factor of loss of water to calculation three, we have (as in calculation two) the following:

0.75 : 1 :: 1.562 : 2.083

0.875 : 1 :: 0.869 : 0.993

and

2.083 : 0.993 :: $1.50 : $0.72

At these rates the gross receipts would have been as follows:

In 1897	$31,733.
" 1898	41,779.
	$73,512.
Maintenance as above	49,467.
Net receipts for the two years	$24,045.
Average per year	$12,022.

Or 3 $^{6}/_{10}$ per cent. on $337.000."

Of these calculations, No. 2 shows that the proportional rate in Fresno and Merced (that in Stanislaus being taken at $1.50) would be $0.35, causing an annual *deficiency* in complainant's gross income, below the annual expense of $533. That calculation is based on the theory most favorable to complainant.

Calculation 4, the one most favorable to defendants, shows that the rate in Fresno and Merced would be $0.72; which would allow a net annual income of only 3$^{6}/_{10}$ per cent. on $337,000.

Calculation 2 is, we submit, strictly according to the testimony; but we think that a consideration of the map shows that the testimony as to the use and purpose of the parallel canal is probably not quite correct. That map shows that the parallel canal terminates in Merced County, some 17 miles above Stanislaus County; and it is therefore probable that it is of *some* use in Merced County. If that be so, calculation 2 may be somewhat too favorable to com-

plainant. On the other hand, even in that case, calculation 4 must be far too favorable to defendants. We believe that, if further testimony had been taken, the truth would have appeared to lie somewhere between the results of those two calculations, but much nearer to calculation 2.

But, however that may be, either one of the four calculations shows, that whatever theory may be adopted, these rates do deprive complainant of the lowest compensation to which, under the law, it is clearly entitled; and that the decree was therefore correct, even if the basis adopted by the Supervisors should be taken to be the proper one.

VI.

COMPLAINANT HAS NOT BEEN GUILTY OF ANY UNJUST DISCRIMINATION.

1. It was charged in the answer (p. 19) that complainant annually permits Miller & Lux, (alleged to be a firm, but which is a corporation,) which is the largest stockholder of complainant, to irrigate many thousands of acres of its land, from complainant's canal, free of charge.

It was shown that Miller & Lux owns a little more than one-half of complainant's stock; but otherwise no proof whatever was offered in support of that allegation, and it need not be further considered.

2. The answer also alleged, in the same paragraph, that complainant is accustomed to furnish water to Miller & Lux at one-half the rate charged to other customers, which

acts resulted in great loss of revenue to complainant, and a corresponding injury to the other customers.

The evidence on which defendants relied in support of that allegation, was as follows:

On May 18, 1871, Miller & Lux (then a copartnership) entered into a contract (Exhibit 4, p. 380) with the San Joaquin & Kings River Canal Company, complainant's grantor and predecessor, of which corporation Miller & Lux were not stockholders. For reasons that will hereafter appear, it is not necessary to state the terms of that contract, further than to say that Miller & Lux promised, on certain conditions, to pay the canal company a subsidy of $20,000, and to give it a right of way over their lands.

On February 7, 1872, Miller & Lux entered into an agreement with complainant, (Exhibit 5, p. 383,) by which the previous agreement was canceled by mutual consent. It was recited that Miller & Lux had already paid $13,333 of the subsidy previously agreed, (which was retained by the company,) and they agreed to pay the further sum of $6,666.66 on certain conditions (which were never performed). They further agreed to grant to the company a right of way for its canals through all their lands in Fresno, Merced and Stanislaus Counties, (which covered by far the largest portion of complainant's canal,) and to grant them certain other privileges in connection therewith. Complainant, on its part, agreed that the price which Miller & Lux should pay "for water furnished by it, used in "irrigating each crop, the regular price paid by others for "irrigation, not to exceed $1.25 per acre."

At that time, Miller & Lux owned only a trifling amount of complainant's stock.

Disputes thereafter arose between the parties as to the true construction of that contract, which resulted in litigation. To settle those controversies, the trustees and stockholders of complainant agreed to a compromise, (pp. 166-7,) in pursuance of which a new contract (Exhibit 6, p. 387,) was entered into on November 12, 1879. By that contract, Miller & Lux agreed to give the company a deed for the right of way previously agreed upon, which should convey a width of 100 feet on each side of the canal. It was further agreed that the clause of the former contract, heretofore stated, as to the price of water, should be construed to mean that the company should deliver to Miller & Lux water, "at its regular rates not exceeding $1.25 per acre per "crop, provided the crops are cut; but in case the alfalfa "lands should be pastured, then each supply of water of the "usual quantity supplied to produce a crop shall be "deemed to be such a supply as will entitle a charge to be "made therefor, the same as if a crop shall be cut." It was, however, agreed that Miller & Lux should be entitled to that rate only on 33,333 1-3 acres, and that that right should not pass to their grantees.

When that contract was executed, Miller & Lux had acquired a controlling interest in complainant's stock; but other stockholders, owning some 27,000 shares out of a total of 100,000, assented in writing to that agreement.

That contract has been followed ever since; and Miller & Lux pay thereunder, for the irrigation of alfalfa, $1.25 for each crop raised by them.

It will thus be seen that these contracts were entered into for valuable considerations. Miller & Lux paid $13,333 in money, and conveyed a large amount of land; and, as will be seen hereafter, gave another and still more valuable consideration, namely: the right to take, from the San Joaquin River, sufficient water to supply the company's consumers,—a right which, under the law of California, the company could obtain only by purchase from Miller & Lux, who were riparian owners, or by judicial condemnation and payment. As no evidence was offered to show that these considerations were not adequate or that the contract was in any respect unfair, there can be no doubt that this contract was a proper one,—such contracts being valid under the law of California.

Fresno Canal & Irrigation Co. v. *Park,* 129 Cal. 437;
San Diego Flume Co. v. *Souther,* 104 Fed. 706;
Souther v. *San Diego Flume Co.,* 112 Fed. 228.

Such being the case, we are unable to see what *possible* injury these contracts could work to the other consumers. If the consideration was adequate, (which, in the absence of any evidence to the contrary, must be deemed to be the fact,) these contracts could not affect them. By this arrangement, the company obtained its water, and the greater portion of its right of way, without charge, and received, in addition a sum of money. But for that arrangement, the cost of the construction of the works and the acquisition of the water, would have been that much more, and the rates would have been correspondingly higher. The other

consumers, therefore, received the full benefit of the consideration, and cannot be heard to complain, even if Miller & Lux received a benefit thereby.

But, in fact, there is no evidence to show that Miller & Lux do obtain any advantage. The regular rates, both those fixed by complainant and those fixed by the Supervisors, consist of a yearly sum of money, for which the company furnishes all the water which the consumer requires to irrigate his land throughout the entire season, no matter how many crops he raises. (P. 122.) Usually, they raise from three to five crops annually, irrigating for each crop. (P. 329.) By these contracts, Miller & Lux pay, for irrigating *each crop,* one-half of the regular annual rate. If, then, they raise only one crop, they pay one-half of the full annual rate; if two crops, the full amount of that rate; and if three or more, they pay a *greater* amount per annum than any one else. The only advantage they obtain, then, is that, if they think it better to raise only one crop annually, and therefore require only one irrigation, they do not have to pay for two irrigations. The other consumers think it better to have three or more irrigations in a season; and the Supervisors, in fixing these rates, have followed that practice. It therefore does not lie in the mouths of defendants to say that Miller & Lux receive any unfair advantage over them.

3. Defendants also complained, in the court below, of another contract (Exhibit 22, p. 396) made December 24, 1897. As that contract was made long after the fixing of these rates, and after the commencement of this suit, we fail to perceive how it can be considered.

In any event, however, that contract certainly contains nothing unfair. It merely placed a construction (undoubtedly the true one) upon the preceding contract, namely, that Miller & Lux are to pay "for each crop irrigated, or "for water furnished of the usual quantity supplied to pro- "duce a single crop, one-half of the regular rates per sea- "son," not exceeding $1.25 per acre per crop.

4. The other contract on which defendants rely, is Exhibit E, page 399, which was made May 18, 1899. As that contract was made long after this case was at issue, it can, of course, cut no figure here.

But what defendants appear really to rely on are the *recitals* in that contract, which, they claim, furnish evidence to support the allegation in the answer concerning the use of free water by Miller & Lux. We cannot adequately state those facts without transcribing the material portions of that contract, which are as follows:

> "Whereas, prior to the construction of the canal of the party of the first part, Henry Miller and Charles Lux were the owners of lands lying along and bordering upon the San Joaquin river, and its sloughs, in said State, and lying above and below the head of the canal of the party of the first part, and were the owners of riparian rights in and to the waters of said river and sloughs, and had been accustomed to and did actually use the waters of said river and sloughs which naturally overflowed said lands, and also to take water therefrom by artificial means, for the purpose of irrigating said lands and furnishing water for their cattle and live stock, and for other domestic uses, in accordance with their said riparian rights;
>
> "And, whereas, said Henry Miller and Charles Lux, for the purpose of aiding the construction of said canal of the party of the first part, did pay to the party of the first part a subsidy in money,

and conveyed to it a right of way for its said canal where the same passed through the lands of said Henry Miller and Charles Lux of a width of one hundred (100) feet on each side of the center line of said canal, and permitted the party of the first part to appropriate and divert from said river through said canal eight hundred (800) cubic feet per second of the water flowing in said river;

"And, whereas, at all times since said appropriation was made by the party of the first part, said Henry Miller and Charles Lux and said Henry Miller, as the survivor of them, and the party of the second part (as the successor in interest of said Henry Miller and Charles Lux) continued, as said riparian owners, to use the overflow waters of said river and sloughs upon said lands for the aforesaid purposes, and also to use, for the purpose of irrigating uncultivated land, and furnishing water for their live stock and for other domestic uses, and with the consent of the party of the first part, and without any charge therefor by it, the surplus water running in said canal not used or required by the water-consumers of the party of the first part other than said Henry Miller, Charles Lux, and the party of the second part;

"And, whereas, during all said times it was understood by all said parties that said Henry Miller and Charles Lux, and said Henry Miller, as the survivor of them, and said party of the second part, as the successor in interest of them, were of right entitled to the said use, without charge, of the said surplus water in said canal; and that said party of the first part was of right entitled to waste said surplus water on said uncultivated lands;

"And, whereas, the party of the second part has agreed to permit the party of the first part to appropriate and divert from said river through its 'outside canal,' three hundred and fifty (350) cubic feet per second of the water flowing in said river, in addition to the aforesaid eight hundred (800) cubic feet per second;

"Now, therefore, in consideration of the premises, and to the end that the rights of the respective parties hereto, as heretofore understood and recognized, may be fixed and established, the party of the first part does hereby confirm unto said party of the second part the right to use, for the purposes of irrigating the said uncultivated lands above referred to, and of furnishing water for its cattle

and live stock, and for other domestic uses, free of cost or charge to it, all or so much of the surplus water running in the canals of the party of the first part as the party of the second part may desire to use for said purposes, and which may not be used or required by the other water-consumers of the party of the first part; and said party of the second part does hereby confirm unto said party of the first part the right to waste said surplus water on said uncultivated land.

"And the party of the first part does hereby acknowledge and declare that it has no claim to make against the party of the second part, or its predecessors in interest, on account of the use heretofore made by it and them of said surplus water."

This contract was nothing but a formal recognition, by complainant, of the unquestionable rights of Miller & Lux,—and, indeed, it gave them less than their legal rights.

By the law of California, no one has, as against a riparian owner, the right to divert *any* water whatever from the stream; and even a riparian owner has no right, as against another riparian owner, to divert any water from the stream and carry it upon *non-riparian* lands.

Lux v. *Haggin,* 69 Cal. 255;
Heilbron v. *Fowler Switch Canal Co.,* 75 Cal. 426, 431;
Gould v. *Eaton,* 117 Cal. 539.

The consent of Miller & Lux that complainant might divert water into its canal and carry it upon non-riparian lands, was merely a consent that complainant might take so much water as should be needed by its customers; and, indeed, complainant, as a mere appropriator, had no right to take any more. Whatever additional water complainant takes, at any time, is the property of Miller & Lux; and, if

it is turned upon the lands of the latter, complainant is not entitled to any compensation therefor. On the other hand, complainant cannot, in justice to its consumers, strictly limit itself to taking only so much water as will be actually used in irrigation. The demand necessarily varies, and complainant ought, therefore, to keep enough water in its canal to supply any probable demand; and it cannot, without great damage, ever allow its canal to become dry. It frequently results, therefore, that water is left in the canal, after supplying all the wants of the consumers. The company can lawfully do nothing with that water, except to turn it back into the stream; and the consent to Miller & Lux that it may be set free on its land, cannot confer upon the company any right to exact compensation for it.

This contract is, therefore, fair and just, and rather beneficial than injurious to the other consumers; and the practice thereby sanctioned, and which has always existed, is a proper one, and can not affect rates.

It should be further remarked that, if this practice were injurious to the other consumers, it would be even more injurious to the stockholders other than Miller & Lux. Yet the evidence (pp. 172-177, 183) shows that, after the fullest investigation, this contract was prepared and concurred in by trustees representing these outside stockholders only, and was expressly ratified by those stockholders personally. It is not likely that they would have done so, if they had believed that Miller & Lux were thereby acquiring any advantage; and they had the best opportunity of knowing whether that was so or not.

The foregoing portions of this brief contain our argument on the points made in the court below and available to defendants on the printed record here. We have prepared it in the light of the arguments in that court, of course being unable, in the absence of any brief from appellants, to anticipate any new argument which they may make on those points in this Court. We shall now proceed to make such suggestions as occur to us as to the points which counsel inform us they intend to make in this Court,—so far, at least, as the outline furnished us by counsel indicates their purport. Some of them are not intelligible to us, and we shall be compelled to omit any reference to them, nor shall we touch on those which are sufficiently covered by what we have said above.

VII.

REPLY TO APPELLANTS' POINTS.

1. THE COUNTY AND ITS BOARD OF SUPERVISORS ARE PROPER AND SUFFICIENT PARTIES DEFENDANT TO THIS SUIT.

Counsel claim that, because the state statute does not impose on the Supervisors any duty as to the *enforcement* of the rates fixed by their ordinance, the validity of that ordinance can be determined only in a suit between private persons.

The question so indicated is, so far as we are aware, a new one. Such suits, under this and similar statutes, have been frequently maintained without suggestion that they were improper or that decisions in them would bind no one. Such

a case was *San Diego Land Co* v. *National City,* 174 U. S. 739; and such a case was *Spring Valley Water Works* v. *San Francisco,* 82 Cal. 286. In the latter case,—in which, as here, only the County, its Board of Supervisors, and the members of that board, were defendants;—a decree, precisely like the one now appealed from, was affirmed.

But a question depending upon precisely the same principles, was presented to the Circuit Court for the Southern District of California, in the case of *San Diego Land Co.* v. *Jasper,* 110 Fed. 702, 712. In that case, (which was brought under this very statute,) the Supervisors were made defendants, and there were also joined as defendants the 25 persons upon whose petition the Board had acted. The latter persons made default; whereupon the complainant contended that they were the real parties in interest, and that the complainant was, upon their default, *ipso facto* entitled to a decree against *all* the defendants. The court ruled against that proposition, and said:

> "Each and every person to whom the rates fixed apply—*in other words, the public*—is interested in the question; *and the representative of this public in the matter is the board of supervisors,* each member of which was by the complainant made a party defendant to the suit. * * * This practice has been uniformly sanctioned and held to be proper." (Citing a number of cases.)

Among the cases so cited by the learned judge, (himself a high authority on California law,) is *Railway Co.* v. *Minnesota,* 134 U. S. 418. In that case, Mr. Justice Miller said, in his concurring opinion (p. 460):

"Until the judiciary has been appealed to to declare the regulations made, whether by the legislature or by the commission, voidable [for unreasonableness], the tariff of rates so fixed is the law of the land, and must be submitted to both by the carrier and the parties with whom he deals. The proper, *if not the only,* mode of judicial relief against the tariff of rates established by the legislature or by its commission, is by a bill in chancery asserting its unreasonable character and its conflict with the Constitution of the United States, and asking a decree of court forbidding the corporation from exacting such fare as excessive, or establishing its right to collect the rates as being within the limits of just compensation for the service rendered. Until this is done, *it is not competent* for each individual having dealings with the carrying corporation, *or for the corporation with regard to each individual who demands its services, to raise a contest in the courts over the questions which ought to be settled in this general and conclusive method.*"

This language was quoted by the full bench, in the case of *St. Louis & San Francisco R. Co.* v. *Gill,* 156 U. S. 649, 659, and was so quoted with approval, except that the Court pointed out that such a method could not be followed where the rates had been fixed directly by the legislature; and the Court said (p. 666):

"Sometimes, in acting on this subject, the state legislatures have created commissions or boards of public works, with power to *establish* rates * * * and in such instances the course recommended by Mr. Justice Miller, already cited, may well be followed: that the remedy for a tariff alleged to be unreasonable

should be sought in a bill in equity or some equivalent proceeding, *wherein the rights of the public* as well as those of the company *can be protected.*

"But there are other cases, * * * where the legislatures choose to act directly on the subject by themselves establishing a tariff of rates and prescribing penalties. In such cases there is no opportunity to resort to a compendious remedy, such as a proceeding in equity, *because there is no public functionary or commission which can be made to respond.*"

Those cases obviously proceed on the theory that the rights to be protected against the company, are the rights of *the public,* and that the public ought therefore to be represented. That is unquestionably the true position under the California act of 1885. Under that act, and under the express terms of the ordinance here in question, (p. 460,) the rates are fixed for any water furnished "to the inhabitants" of the county. The powers of the Supervisors are set in motion (sec. 3) by a petition of twenty-five "inhabitants" of the county, who may or may not be consumers of water. When the board acts, and after it has acted, it cannot be known what individual inhabitants will be affected by its action. The right conferred by the statute is, therefore, strictly a *public* one;—indeed, it is only that fact which confers upon the State any right to fix rates at all. That being so, a bill in equity to determine the validity of the ordinance can not be maintained against a merely private individual, nor against any person not representing *the public*; and unless the county or the board does represent the public in this matter, no bill can be maintained at all.

We submit that, in such cases, the governing body of a county or municipality does represent the inhabitants of the county, in all matters which relate to them as such, whether that body is or is not specially charged with the judicial enforcement of their rights. Mr. Freeman, in section 178 of his work on Judgments, says:

> "The position of a county or municipal corporation towards its citizens * * * is, upon principle, analogous to that of a trustee toward his *cestuis que trust,* when they are numerous, and the management and control of their interests are by the terms of the trust committed to his care. A judgment against a county or its legal representatives, in a matter of general interest to all its citizens, is binding upon the latter, though they are not parties to the suit."

The learned author then proceeds, in that section, to give the reasons for that proposition, on principle and on authority, so fully, that we need add nothing to what is there said; and we submit, for those reasons, that this suit was properly brought against these defendants.

We will add that this point, though raised by the demurrer and the answer, was never brought to the attention of the court below, either on the argument or otherwise; and that we are therefore not informed of the reasons which appellants intend to urge in support of it.

2. THIS BILL STATES A SUFFICIENT CASE IN EQUITY, FOR COMPLAINANT HAS NO "PLAIN, ADEQUATE, AND COMPLETE REMEDY AT LAW", WITHIN THE MEANING OF SECTION 243 OF THE REVISED STATUTES.

This point, also, though made in the demurrer, was never brought to the attention of the court below.

On general principles, this point needs no argument, as this case does not differ from any of those heretofore decided by this Court.

But we are informed that counsel claim that such a remedy is furnished by the act of 1885, by allowing complainant to apply to the Supervisors to fix new rates. Section 5 of that act provides that "The said rates, when so fixed by "such Board, shall be binding and conclusive for not less "than one year next after their establishment." Complainant, therefore, could obtain *no* remedy from the Board, as to that year; and, as there can be no presumption that it would act differently a second time, such a supposed remedy is no remedy at all. But the words "remedy at law," as used in section 243 of the Revised Statutes, mean, of course, a remedy in a *court* of law; and counsel's objection, therefore, can have no force.

3. THE STATE STATUTE OF MAY 14, 1862, UNDER WHICH COMPLAINANT WAS INCORPORATED, IS NOT IN CONFLICT WITH THE CONSTITUTION OF THE STATE.

We understand that appellants will contend that that act is void, under the provisions of section 31 of article IV of the state constitution of 1849, in that, by its terms, it is made inapplicable to certain counties. This point was not raised, in any manner, in the court below; and it is therefore entitled to but little consideration here,—if, indeed, appellants can be heard to make it at all.

(*a*) We think that appellants are estopped, by their answer, from now questioning the validity of that act in this particular. That objection goes to the act as a whole; and, if well taken, it would entirely defeat complainant's incorporation and deny it any standing in court. The bill alleges (p. 1) that complainant was incorporated under the provisions of the act of April 14, 1853, (Cal. Stats. 1853, 87,) which did not authorize the formation of such corporations, "as amended by" this act of May 14, 1862, by which act only could such a corporation be formed. That allegation was admitted by the answer (p.15); and defendants are therefore in no position to deny the due incorporation of complainant. But the effect of the point now, for the first time, raised by them, would be that there was no law of the state under which complainant could be incorporated,—thus contradicting their answer. We submit that they cannot be permitted to do this.

(*b*) The act in question remained in full force for more than ten years; during which period complainant, and many other similar companies, were incorporated under it, and it was the only act for the incorporation of companies for such a purpose. Though repealed in 1873, it has ever since, as we have shown, continued to be the law as to corporations formed under it. Yet its constitutionality has never before been questioned in any court, State or Federal, nor has the question now sought to be raised been presented to any court as to any statute. Under such circumstances, such a point ought not to be made, for the first time, in this Court, after

a long and costly trial had upon the assumption that the act was entirely valid.

(*c*) This provision of the state constitution,—that "cor- " porations may be formed under general laws, but shall not " be created by special act,"—has a well understood signification. It forbids the legislature to pass an act creating a particular corporation, or conferring upon any particular corporation, as such, any privilege, or imposing upon it any duty, which is not conferred or imposed upon all corporations of the same character. So far as we are aware, no court has ever held that this provision goes any further.

This act, therefore, is not obnoxious to this objection. It authorizes the formation of corporations for a particular purpose; and all its provisions apply, and apply equally, to all corporations to be formed for that purpose. Why, then, is it not a general law, within the meaning of this constitutional provision? In the absence of any knowledge as to the grounds on which counsel mean to base their objection, we can do little more than to ask that question.

This section of the constitution of 1849 is the only one in that constitution which at all forbids special acts; and the courts of the state have given it only the construction we have stated. In 1879, it was replaced by the present constitution of the state, in which (art. IV, sec. 25) minute provisions were made against "*local* or special laws." Those provisions were such as to require new definitions by the courts; but, even under those provisions, as so defined, the act in question could not be held to be "special." Even under the present constitution, the rule laid down by the Supreme Court of

California is, that an act operating uniformly upon the whole of any single class, when the classification is founded upon some natural or intrinsic distinction, is a general law.

Abeel v. *Clark,* 84 Cal. 226, 229;
Cody v. *Murphey,* 89 Cal. 522;
People v. *Central Pacific R. Co.,* 105 Cal. 576;
Murphy v. *Pacific Bank,* 119 Cal. 334, 341;
Rode v. *Siebe,* 119 Cal. 518;
Vail v. *San Diego,* 126 Cal. 35;
Murphy v. *Pacific Bank,* 130 Cal. 542, 550.

The objection now under consideration is founded upon the fact that, by section 5 of the act of 1862, it is enacted that the provisions of that act "shall not apply to the Counties of "Nevada, Placer, Amador, Sierra, Klamath, Del Norte, "Trinity, Butte, Plumas, Calaveras, and Tuolumne." The counties so named are the mountain counties of the state, in which, at that time, the sole business was mining, and in which, even at this day, only very small portions are adapted to agriculture. The legislature may well, therefore, have considered that the portion of the state, so excepted, was not adapted to such a system of canals as was created by the act. Water, it is true, was used in those counties for mining; but corporations for mining purposes were allowed by the act of 1853, and the legislature may have deemed the provisions of that act more suitable to such a territory. But it is not necessary to know what were the actual reasons which influenced the legislature. It is sufficient, as was said in *People* v. *Central Pacific R. Co., supra,* (p. 585) that there is a natural classification "which will *suggest* a reason which

"*might* rationally be held to justify the diversity in the legis-
"lation," and which is made "for the purpose of meeting
"different conditions naturally requiring different legisla-
"tion."

Even under the present constitution of the state, then, this act would be held valid.

But the case is still stronger under the constitution of 1849. That constitution did not forbid "local" laws; and the word "special," as there used, must be read, in view of the context, as meaning special only as related to corporations. Under it, no corporation could be specially created or endowed; but, so long as all corporations of the particular kind should be treated alike, there was nothing to prevent the legislature from forbidding such corporations in a particular part of the state. Such legislation is, on general principles, within the unquestioned competence of the legislature; and unless *expressly* forbidden by the constitution, must be held valid. He who denies such a power, must show clearly and beyond a doubt that the constitution has deliberately denied it to the legislature. We cannot conceive that appellants can successfully do so here.

4. COMPLAINANT SUFFICIENTLY PROVED THE COST OF ITS CANAL, AND THE EXPENSE OF MAINTAINING IT.

Complainant (p. 55) produced in evidence all of its books of account, and the papers and vouchers relating thereto, and also those of the former corporation, its grantor. By stipulation of the parties, (p. 457,) it was agreed that these books might be omitted from the transcript of the record on this appeal, and that the tabulations made therefrom, and made

exhibits in the cause, correctly represent the contents of those books. It was further stipulated (p. 459) that there was evidence to show that those books were correctly kept, and (pp. 464-5) that that evidence might be omitted in printing.

Those books, so proved, were competent evidence of the facts contained therein.

2 Jones on Evidence, §§ 323, 324, 325, 326, and authorities there cited.

Complainant's exhibits 2 (p. 401), 3 (p. 402), and 12 (p. 445), which are so admitted to be correct, do show the matters here in question, with at least sufficient certainty for all the purposes of this case; and we are not informed what objections appellants have to urge as to them.

5. THE CONSTRUCTION OF PLAINTIFF'S CANAL WAS NOT EXTRAVAGANT.

The point now made by appellants was made in the court below, and much evidence was taken concerning it. At the request of the then solicitor for the appellants, and upon his assurance that this point would not be made in this Court, we entered with him into a stipulation, (pp. 464-5,) that that testimony need not be printed, and that that stipulation should be taken as a substitute for the proceedings provided for by subdivision 9 of rule 10.

The testimony on this subject, so omitted in printing, and which is contained in the original written record filed in this Court, is the following:

Testimony of	M. L. Stangroom,	page	219.
"	" J. Q. Drummond,	"	286.
"	" C. H. Barrett,	"	291.
"	" A. H. Rose,	"	304.
"	" W. S. Chapman,	"	736.
Complainant's Exhibit	7,	"	960.
"	" 8,	"	971.
"	" 15,	"	989.
"	" 16,	"	999.
"	" 17,	"	1001.

Also complainant's books of account before mentioned.

The above was the evidence before the court below on this point. Whether there is any evidence in the printed record, which might possibly bear on this point, we do not know; but, if so, it is merely incidental to other matters.

We submit that this case, like any other, should be argued on the evidence which was before the trial court, and that a party who causes material evidence on any point to be omitted from the printed record, should not be heard here on that point.

6. COMPLAINANT'S FARMING OPERATIONS DO NOT AFFECT THIS CASE.

It is true that, for the purpose of illustrating the methods and value of irrigation to a people then not experienced in that matter, complainant at one time operated a farm, and that that experiment was an unprofitable one. But no part of the cost of those operations is included in any of complainant's statements of the cost of the construction or main-

tenance of the canal and works, nor in any way relied on by us. That matter, therefore, has no relevancy here.

7. THE ESTIMATE OF THE VALUE OF COMPLAINANT'S CANAL MADE BY THE ASSESSORS FOR THE PURPOSES OF TAXATION, IS NOT EVIDENCE OF THAT VALUE FOR ANY PURPOSE IN THIS CASE.

The valuation, by a public assessor, of property to be taxed, is merely his own opinion. It is, of course, evidence in proceedings founded upon the assessment; but in other cases is mere hearsay, and can be no evidence of value.

2 Jones on Evidence, § 300;
Flannigan v. *Althouse,* 56 Iowa, 513;
Tuckwood v. *Hanthorn,* 67 Wis. 326, 336;
Adams v. *Hickox,* 55 Iowa, 632.

If any such assessments are in evidence in this case, they were introduced for a different purpose, and are not evidence on this question.

8. COMPLAINANT'S REVENUE FROM THE PROPERTY ON WHICH THESE RATES WERE FIXED WAS NOT GREATER, IN 1897 OR 1898, THAN ITS REVENUE BEFORE THE PASSAGE OF THIS ORDINANCE, BUT WAS LESS.

The ordinance in question was adopted June 24, 1896. In September, 1896, (pp. 84-9,) complainant commenced the construction of a new canal, called the "Outside Canal," about 34½ miles long, which supplies water to land not reached by the former canal. This new canal (which is shown on the map) was in operation in 1898 and a part of

it in 1897; and the receipts from water, shown by exhibit 11, include irrigation from a large amount of land irrigated only from that new canal. As the receipts from different canals were not segregated on the books, it is not possible to ascertain how much of complainant's revenue was from the new canal. The aggregate receipts for those years cannot, therefore, be compared with the previous receipts.

As this new canal cost more than $85,000, and, of course, was not included in the Supervisors' estimate of the value of complainant's property, appellants' present point cannot be maintained.

9. COMPLAINANT'S VOLUNTARY REDUCTION OF RATES, PENDING THIS SUIT, CAN NOT BE CONSIDERED HERE.

The evidence shows (p. 122) that, until the validity of these rates could be determined, and while they were in operation in Stanislaus County, complainant voluntarily allowed a reduction of rates to the consumers in Fresno and Merced Counties. This act of courtesy and fairness to those counties cannot, as we have shown, be considered in this case; and, in any event, the circumstances under which it was done deprive it of any significance.

10. THE DIFFICULTY OF DELIVERING WATER IN STANISLAUS COUNTY, DOES NOT SHOW THE REASONABLENESS OF THE RATES.

As that county is at the lower end of the canal, and as the water, at times, is so short that (pp. 121-2) it cannot reach that county without great loss, the consumers in that county are, no doubt, sometimes put to inconvenience. But that is a

necessary incident of their situation, for which complainant is not responsible,—especially as the canal was extended to them only on their earnest importunity. As no one can be required to pay for water which he does not receive, that fact can not affect the rates.

Sometimes, it is true, water is supplied to consumers in Fresno and Merced, to the total deprivation of those in Stanislaus. That, however, is the result of the law, which complainant cannot control. The canal was first built into Fresno and Merced, and was not extended into Stanislaus for many years. Under the law of California, the consumers in Fresno and Merced thus acquired a priority, which complainant is bound to respect.

Merrill v. *Southside Irrigation Co.*, 112 Cal. 426.

Those circumstances, however, are, as we have said, immaterial in fixing rates.

For the reasons in this brief stated, we submit that the decree appealed from should be affirmed.

W. B. TREADWELL,

For Appellee.

IN THE

SUPREME COURT

OF THE

UNITED STATES,

OCTOBER TERM, 1903.

No 80.

THE COUNTY OF STANISLAUS ET AL.,
Appellants,

vs.

THE SAN JOAQUIN AND KINGS RIVER CANAL AND IRRIGATION COMPANY,
Appellee.

SUPPLEMENTAL BRIEF FOR APPELLEE.

By permission of the Court, we subjoin a few remarks as to such matters in appellants' brief as are not covered by our original brief. We will here follow the numbering of the points in appellants' brief.

I—1.

THE COUNTY AND ITS BOARD OF SUPERVISORS ARE PROPER AND SUFFICIENT PARTIES DEFENDANT TO THIS SUIT.

The error in appellants' argument on this point consists in assuming that the "rate-payers" have *private* rights,

which will be affected by this suit, and that they are therefore necessary parties. But, as we showed on page 69 of our original brief, there are no such private rights involved. The word "rate-payers," used by counsel, is unknown to the law. The Act of 1885, authorizing the fixing of rates (Appellants' brief, pp. 16–23), directs the Supervisors to fix rates for water furnished to "the inhabitants" of the county, and to act upon the petition of "twenty-five inhabitants, who "are tax-payers" of the county, and who may or may not be consumers of water. By this ordinance, therefore, no private individual acquired any rights whatever, except as one of *the public*. The right, therefore, is strictly a public one; and, as we said on pages 66 to 70 of our original brief, the Board of Supervisors is the lawful representative of the public as to this matter.

This point was directly decided by this Court in *San Diego L. & T. Co.* v. *Jasper*, 189 U. S., 439,—which case we inadvertently overlooked in preparing our original brief.

The case of *New Orleans Water Works* v. *New Orleans*, 164 U. S., 471, is not in point. The ordinance there in question granted certain franchises to certain designated individuals, *as such;* and *their* rights were therefore private, and no public body could represent them.

I.—2.

COMPLAINANT HAD NO REMEDY AT LAW.

Counsel for appellants evidently overlooked the provisions of Section 5 of the Act of 1885 (Appellants' Brief, p. 20), that the rates fixed by the board remain in force for not less than

one year. (See our original Brief, p. 71.) This suit (Record, pp. 5, 9), was brought within three months after the passage of the ordinance, and therefore nine months before new rates could take effect.

According to counsel's theory, no suit could ever be maintained; for the same condition would exist every time the board should fix rates.

The cases cited by counsel, on page 39 of their brief, have no application. They were cases where the law provided boards of revision of assessment, to whom application could be made *before the assessment could take effect.*

II.—2.

THE CONSTRUCTION OF COMPLAINANTS' CANAL, WITH CAPITAL INVESTED BY ITS STOCKHOLDERS, CREATED A CONTRACT, UNDER SECTION 3 OF THE ACT OF 1862, THE OBLIGATION OF WHICH THE STATE COULD NOT IMPAIR.

Our argument on this point will be found at pages 8 to 11 of our original brief. We do not care to add anything to that argument, except to say that each of the cases cited by us at the foot of page 9 of our brief is directly in point, and that they are not at all as represented by counsel at pages 69 to 77 of their brief. In each of them, it was decided that a provision like this constituted a contract such as is protected by the Constitution of the United States, and that a reserved power to alter or repeal corporate charters did not permit the State to revoke *such* a contract, even though it was contained in the charter. We respectfully request the Court to examine those cases.

We may remark that there is nothing in the State Constitution to prevent the State from entering into a binding and unalterable contract with a corporation, *when formed*, with the same effect as if made with an individual. This particular provision was not, in itself, a contract, but a mere offer. This act contained two separate and distinct things: (1) a provision for the formation of corporations of a certain character, and (2) an invitation to any such corporation to invest its money, after incorporation, in the construction of certain works for the public benefit, under certain guaranties against spoliation by the State. When this offer was accepted and the money so invested, then and not before a contract was created,—a contract as binding as any other. This provision, though contained in an act for the formation of corporations, was entirely distinct therefrom, and might as well have been separately enacted. It therefore constituted no part of a law which, under the State constitution, might be altered or repealed.

We should also remark that, as shown on pages 6 to 7 and 13 to 15 of our original brief, the act of 1885, properly construed, was not intended to affect this contract. That was the construction adopted by the Court below; and appellants' brief does not appear to controvert that proposition.

III.

The evidence shows that the Supervisors gave no consideration to the cost of complainants' works.

The evidence for the petitioners, before the supervisors, was that the cost of now replacing the works would be

$312,358. The expert, it is true, estimated their present cash value at $251,000; but he did so (p. 190), only because, as he said, the canal was depreciated by silting, and by the age of the lumber. He did not, however, pretend that the canal was any less effective or useful on that account; and that matter was therefore immaterial. The Board added $25,000 to the cost of replacement as testified to by him—calling the value $337,000. This addition of $25,000 appears to have been purely arbitrary, and, at any rate, had no relation to the original cost, and was not based on any evidence before the Board. The conclusion of the Court below (p. 48), was therefore correct.

Counsel are in error in saying that we claim anything for depreciation. We have never made such a claim. On the contrary, we admit that any depreciation must be *deducted* from the original cost, in ascertaining the present value. But such a depreciation, in order to be so considered, must be such as renders the works less useful for the purpose intended. Such is not the case here. The evidence shows, without contradiction, that our works are, in every respect, as useful as ever, and are therefore now worth what they cost.

IV.

As to the evidence of the cost of complainants' work.

Counsel are mistaken (p. 87) in saying that this Court held, in *Dow* v. *Beidelman*, 125 U. S., 680, that "what was "paid by a company to its predecessor for property * * * "is *not* satisfactory evidence of the original cost." On the contrary, what the Court held was, that the sum *actually paid*

was better evidence on the subject than the nominal value of the stock and bonds.

On the general proposition, it is evident that complainants' books furnished the best evidence of which the case admitted; and, as the parties have stipulated (Record, p. 459) that these books "were correctly kept," it follows that they *do* show what was "actually expended," and for what it was so expended.

Counsel's statements, on page 89 of their brief, as to what the minutes of complainant show as to the *proper* cost of complainants' works, are seriously misleading. The statement at the bottom of page 157 of the record was made only by an individual stockholder, and expressly on hearsay; and it is certainly not evidence against the corporation. The statement of the president at the middle of page 168, even if evidence at all, obviously proves nothing.

But, as we showed on pages 76, 77 of our original brief, appellants cannot be permitted to urge this matter, in any form, on this record.

Of course, we do not claim, as counsel seem to suppose, that the contributions of the stockholders to the capital are any evidence of the value of the works. We proved what those contributions were, merely for the purpose of showing that the money spent in construction came from the pockets of the shareholders,—thus bringing ourselves within the terms of the Act of 1862.

Counsel's statement at pages 91 and 92 of their brief, that there are 310,000 acres irrigable from complainants' canal, is entirely gratuitous and unwarranted. The testimony to which counsel refer is merely as follows (p. 102):

"Including Miller and Lux and all the settlers, there is about 310,000 or 315,000 acres of land under the canal, below the canal."

Giving that testimony its broadest possible meaning, it only shows that that quantity of land is *low* enough to be reached by water from the canal,—not that the character of the soil or the condition of the surface is such as to admit of successful irrigation, or that all that land is in need of water from this canal. In fact, much of the land is alkaline, very uneven, and practically worthless, and most of the remainder is otherwise irrigated from natural sources. Still less does this testimony show that complainants' works are any more extensive than is required for the needs of the consumers. Such is not the fact. On the contrary, as counsel themselves admit, while there is sometimes more water in the canal than is needed, at other times there is great difficulty in supplying the consumers. There is nothing whatever in this record to show that complainants' works are not properly adapted to the area which they were intended to supply.

V.

NEITHER THE ASSESSORS' VALUATIONS FOR TAXATION, NOR THE PRICES PAID AT SALES OF COMPLAINANT'S STOCK, ARE EVIDENCE OF THE VALUE OF THE WORKS.

On the proposition as to Assessors' valuations, see page 78 of our original brief. It should be noted that, in California, the taxpayer has no part in fixing values, and makes no statement of values.

As to the evidence of the prices obtained at two isolated sales of the stock, it must be noticed that the stock, under California law, is liable to assessment by the directors, and that the total amount of these assessments or calls (pp. 62–3) was $10.15 per share. The amount of all subsequent assessments must, of course, be added to the selling prices, in order to ascertain what was really paid. It therefore cannot be determined from the evidence how much the stock referred to actually cost.

In fact, however ,the price paid at particular sales of stock is not satisfactory evidence of value; indeed, the general rule is that such evidence is not admissible, and we duly objected to this testimony on that ground.

Lastly, even the market value of the stock is no evidence of the cost of the works. The stockholders actually paid in $10.15 per share, or $1,015,000;—indeed, their total net contributions to the capital of the company amounted to $1,050,-067. (Pp. 67, 69, 83). But, whatever they paid in, the cost of construction is known; and, whatever may be the legal basis for fixing rates, the selling price of stock is no criterion.

VI.

As to the effect of the rates complained of.

We need add little to the argument at pages 40 to 57 and 78 to 79 of our opening brief.

On the last line of the second paragraph of page 106 of appellants' brief, there is a miscalculation. The amount there referred to would, according to the record, be about $70,000 instead of about $81,000.

Counsels' table of dividends on pages 116–117 of their brief, if of any importance, shows that the total dividends, in a period of twenty-five years, have amounted to only $390,000, or less than 1½ per cent. per annum on the invested capital, and less than 2 per cent. per annum on the least possible estimate of the cost of the works.

We do not see that counsel's brief has in any respect shaken our argument at pages 40 to 47. The extension of this canal into Stanislaus County was made at the request of the inhabitants of that county and for their sole benefit. They are, by nature, placed in a more unfavorable situation than the inhabitants of the other counties, both by requiring works that the others do not require, with an increased expense of maintenance and administration, and by requiring an additional and proportionally greater amount of water to be carried to them through the other counties. *As between them and the consumers in the other counties* (and that is the only question here), the latter consumers are entitled to, and under this statute will obtain, lower rates than the former. The other counties were first in the field and cannot legally or equitably be deprived of that advantage.

VII.

COMPLAINANT HAS NOT BEEN GUILTY OF ANY UNJUST DISCRIMINATION.

We adhere to what we said at pages 57 to 65 of our original brief. There are two, and only two, ways in which this matter may be viewed as affecting this case. If com-

plainant has been guilty of improper conduct, in relation to the matter in suit, equity will, of course, decline to grant relief. So, even although its conduct may not have been inequitable, still if it has so acted as to voluntarily deprive itself of the revenue to which it would otherwise be entitled, it cannot expect the court to make good that deficiency. Neither of these conditions exists here; and certainly the burden is on the defendants to show that they exist.

It was certainly not inequitable for complainant to make such contracts as it did make, if they were made for adequate considerations, of which the other consumers have received the benefit. Appellants have not proved that those considerations were not fully adequate, or that those contracts were in any respect unfair; and they have therefore failed to show that complainant's hands are not perfectly clean.

Their statement, at page 168 of their brief, that Miller & Lux had not, in fact, used the waste water to irrigate their uncultivated lands, is shown to be incorrect by the very testimony which counsel cite. Miller & Lux, at a certain time, claimed that water *as a matter of right.* On being refused, they deemed it cheaper to buy the control of the corporation, than to litigate the question. The fact that they took that course, clearly does not impugn their right.

Nor does this alleged discrimination, whether lawful or not, affect the case. In the calculations presented on pages 49 to 56 of our brief, we have computed the operation of these rates on the assumption that Miller & Lux are to pay the same rates as all others. Even on that assumption, we

have shown that these rates can afford no compensation to complainant.

We pass over in silence (as the court below did) counsel's unwarranted reflections on the conduct of Miller & Lux. They are entitled to receive no advantage from their control of the complainant corporation; but neither are they, on account of that fact, to be deprived of any of their rights. Confining ourselves, as we may properly do, to the *evidence*, we confidently assert that it contains nothing in any respect derogatory to the complainant or to Miller & Lux. Complainant's dealings have been marked throughout by good faith, and even liberality; and that counsel's position as to this matter is wholly unsupported by the record, is cogently indicated by the fact that the court below did not deem it worthy of notice.

Respectfully submitted,

W. B. TREADWELL,

For Appellee.

IN THE

SUPREME COURT

OF THE

UNITED STATES.

October Term, 1903.

No. 80.

THE COUNTY OF STANISLAUS ET AL.,
Appellants,

vs.

THE SAN JOAQUIN AND KINGS RIVER CANAL AND IRRIGATION COMPANY,
Appellee.

PETITION FOR REHEARING.

To the Honorable, the Justices of the Supreme Court of the United States:

The appellee in the above entitled cause respectfully suggests the following considerations as to the state of the re-

cord in the cause, which appear to have escaped the attention of the Court, and which, we think, would warrant a rehearing.

In our brief, (pp. 27 to 39,) we contended that, in the case of a canal company *in California,* the proper basis upon which the value of complainant's property should be estimated, in fixing rates, "is the original actual cost of that "property, *if that cost was a fair and necessary one, ex-* "*pended in good faith and without waste or extravagance,* "*—deducting therefrom, if necessary, any depreciation* "*which the property has since undergone, rendering it less* "*fit to subserve the public use.*"

In that argument, we endeavored to show that that position is (*a*) supported by general principles, (*b*) rendered necessary by certain rules of law in California, and (*c*) consistent with the Act of 1885, under which these rates were fixed.

In its opinion, the Court does not advert to the peculiar position of a canal company under the law of California, pointed out by us at pages 31 to 39 of our brief; but places its decision entirely on the ground that the complainant *had not proved* that the original cost of its works was reasonable, proper, and necessary. The Court says:

> "The original cost may have been too great; mistakes of construction, even though honest, may have been made, which necessarily enhanced the cost; more property may have been acquired than necessary or needful for the purpose intended. * * * In this case much of the total amount expended in the course of the construction of the works was not proved by those

who made such expenditures, and the items and total amount of the cost of construction were only proved by the books. What such books did not prove was the reasonableness of that cost, its propriety or necessity. * * * Although these minutes did not conclusively prove the fact of the excessive cost of the work, yet where the books of the company were substantially the *only* evidence of the amount expended *and there was no other satisfactory evidence of the reasonableness of the expenditures,* it would not be surprising if the board should have regarded the statements in the minutes relating to excessive cost as a justification, if not a requirement, for the reduction of the cost of construction, upon which rates might be fixed, by at least the amount mentioned, $350,000."

We submit that, in so holding, the Court was evidently unaware of the fact that, in the court below, the complainant introduced full, detailed, and satisfactory testimony, by certain of the persons who had actually made these expenditures, showing that the original actual cost of that portion of complainant's works now "actually used and useful" in furnishing water in Stanislaus County, was $798,429.61, *and that that cost was a fair, proper, and necessary one, expended in good faith and without waste or extravagance.* That matter was gone into, in the court below, with the utmost fullness and detail, leaving nothing questionable or unexplained.

On taking the present appeal, counsel for appellants filed their assignments of error, which will be found at pages 450 to 454 of the printed transcript; and afterwards filed additional assignments, which will be found at page 458.

In none of these assignments was this question raised, directly or indirectly.

Thereupon, the then solicitor for appellants (since deceased) requested us to enter with him into a stipulation that the portions of the testimony relating to this question need not be printed;—he informing us that he would not, in this Court, dispute the reasonableness and propriety of these expenditures, and that he wished to have the record printed at once, without waiting for proceedings under Rule 10. On these assurances, and this question not being raised by any assignment of error, we assented to the request. That stipulation was accordingly made, and will be found at pages 464-5; and it is there stated:

> "This stipulation is intended to be a substitute for the proceedings provided for by subdivision 9 of rule 10, and to have the same effect as if proceedings under said rule had been taken."

The testimony produced by us on this subject, and so omitted in printing, and which is contained in the original written record filed in this Court, is the following:—

Testimony of	M. L. Stangroom,	page	219.
"	" J. Q. Drummond,	"	286.
"	" C. H. Barrett,	"	291.
"	" A. H. Rose,	"	304.
Complainant's Exhibit	7,	"	960.
"	" 8,	"	971.
"	" 15,	"	989.
"	" 16,	"	999.
"	" 17,	"	1001.

Also complainant's books of account.

Under such circumstances, we submit, the appellants are not entitled to contend in this Court that complainant had not fully proved the reasonableness, propriety, and necessity of the cost of its works.

It is an undoubted principle that he who alleges error, must show it; and, therefore, an appellant is not entitled to ask the reversal of a decree, on the ground of insufficiency of evidence, unless the record on appeal contains, and is affirmatively shown to contain, *all* the evidence on the point attacked.

> *U. S.* v. *Copper Queen etc. Co.*, 185 U. S. 495;
> *City of Providence* v. *Babcock*, 3 Wall. 240, 244;
> *Texas etc. R. Co.* v. *Cox*, 145 U. S. 593, 606;
> *Hansen* v. *Boyd*, 161 U. S. 397, 407.

As was said by the Circuit Court of Appeals for the Ninth Circuit, in *Yates* v. *U. S.*, 90 Fed. 57, 62,

> "The burden of proof to show error is upon the party who asserts it; and to maintain his position he must either present to the appellate court *all* of the evidence, so that the reviewing court can see for itself what the evidence was, or present in his bill of exceptions that portion of the evidence which bears upon the point in controversy, *with a statement that no other evidence was submitted.*"

The cases cited were, it is true, cases at law; but, we submit, the rule must necessarily be the same in equity, for, in either case, the action of the court below is presumed to have been correct.

By subdivision 9 of rule 10 of this Court, it is provided:

> "If parts of the record shall be so designated by one or both of the parties, the clerk shall print those parts only; and the court will consider nothing but those parts of the record, and the errors so stated."

We are not aware that this Court has before had occasion to determine the effect of that rule, in circumstances such as we have stated; but the precise question was decided by the Circuit Court of Appeals for the Eighth Circuit, under a rule exactly similar. In *Lincoln Savings Bank* v. *Allen,* 82 Fed. 148, 149, that court held that, *under that rule,* a failure to *print* all the evidence, was equivalent to a failure to incorporate it at all in the record, and that, under such circumstances, a reversal could not be had for insufficiency of evidence. The court said:

> "The burden of proof to show that there was no evidence to warrant that course is on him who asserts it. If he would maintain his claim, *he* must *present* all the evidence to the appellate court, in order that that court may see for itself what the evidence was. If he fails to do so, he cannot prevail on that issue."

We therefore submit that, as the printed record affirmatively shows that it does not contain all the evidence, and as there is no assignment of error pointing to any insufficiency of evidence in the particular indicated, the appellants were not entitled to be heard as to that question.

These facts were set out at pages 76 to 77 of our brief; but, as counsel for appellants did not advert to this subject on the oral argument, and as we confined ourselves to a reply to what he had then said, it is easy to see that the

condition of the record may have escaped the attention of the Court.

We desire to add that the evidence so omitted in printing, taken in connection with a portion of the testimony of C. Z. Merritt, likewise omitted, fully explained the remarks found in the stockholders' minutes referred to in the opinion of this Court. The facts were that this company, at an early period, had done a large amount of engineering and construction work on a proposed canal from Tulare Lake, on which had been expended very much more than $350,000, and which was never completed or used; and it had also sunk over $100,000 on an experimental farm, which had proved a failure. The charges of extravagance made at those stockholders' meetings, referred solely to the money expended on that Tulare Lake Canal and that farm, *and no part of the money expended upon them was included in the said sum of $798,429.61 shown in complainant's Exhibit 12* (pp. 445-6), *which amount the present works were proved to have actually, reasonably, and necessarily cost.* Whether there was or was not extravagance or waste in those *other* works, we *did* prove that no such thing occurred in these expenditures of $798,429.61.

We may further remark that a transcript of all the proceedings and evidence before the Board of Supervisors was put in evidence in the court below (Exhibits G-1 and G-2); and it showed that the minutes referred to were not produced before that Board, and that the reasonableness, propriety, and necessity of complainant's expenditures were not, in any way, attacked or disputed at that hearing.

Those exhibits, also, were omitted from this record. (P. 457.)

Under these circumstances, we respectfully suggest to your Honors that a re-consideration of this case would advance the ends of justice.

Respectfully submitted,

W. B. TREADWELL,

For Appellee.

Supreme Court of the United States.

No. 80.—October Term, 1903

The County of Stanislaus, in the State of California, et al., Appellants, *vs.* The San Joaquin and King's River Canal and Irrigation Company.	Appeal from the Circuit Court of the United States for the Northern District of California.

[January 18, 1904.]

The county above named has appealed directly to this court from a decree of the Circuit Court of the United States for the Northern District of California, setting aside an ordinance adopted by the board of supervisors of Stanislaus County on June 24, 1896, designating the water rates which were to be charged by the company (appellee) to its water consumers for the ensuing year. The appeal here is on the ground that the case involved the construction or application of the Constitution of the United States, under section 5 of the act of 1891. (26 Stat. 826.)

The company was incorporated in 1871, under an act of the California legislature approved in 1853, (Stat. of 1853, p. 87,) as amended in 1862, (Stat. of 1862, p. 540.) After its incorporation and the obtaining of the necessary land the company built a canal or reservoir at a cost, as alleged, of about a million dollars, and it is averred that the property was and is of that value. Subsequently to the completion of its works the company furnished water for irrigating purposes to its customers at rates fixed by it, which were not interfered with by the board of supervisors up to the time of the adoption of the above mentioned ordinance of June 24, 1896. Soon afterwards the company commenced this suit for the purpose of obtaining a decree setting the ordinance aside and declaring it to be null and void, and decreeing that the company was entitled to have the rates for supplying its water to its customers and the users thereof generally so fixed that they would in the aggregate furnish a reasonable and just compensation for the services rendered and a fair, just and equitable return therefor.

The act of 1862 provided in section 3 as follows:

"Every company organized as aforesaid shall have power, and the same is hereby granted, . . . to establish, collect and receive rates, water rents or tolls, which shall be subject to regulation by the board of supervisors of the county or counties in which the work is situated, but which shall not be reduced by the supervisors so low as to yield to the stockholders less than one and one-half per cent per month upon the capital actually invested."

On March 12, 1885, the legislature passed an act (Cal. Stat. 1885, page 95,) providing for the fixing by the board of supervisors of a county of the

rates to be collected by water companies. Section 5 of that act authorized the various boards of supervisors in the State to regulate and control the water rates that might be charged in their respective counties by any person, company, association or corporation, and provided:

"Said boards of supervisors, in fixing such rates, shall, as near as may be, so adjust them that the net annual receipts and profits thereof to the said persons, companies, associations and corporations so furnishing such water to such inhabitants shall be not less than six nor more than eighteen per cent upon the said value of the canals, ditches, flumes, chutes and all other property actually used and useful to the appropriation and furnishing of such water of each of such persons, companies, associations and corporations; but in estimating such net receipts and profits the cost of any extensions, enlargements or other permanent improvements of such water rights or waterworks shall not be included as part of the said expenses of management, repairs and operating of such works, but when accomplished may and shall be included in the present cost and cash value of such work. In fixing said rates, within the limits aforesaid, at which water shall be so furnished as to each of such persons, companies, associations and corporations, each of said boards of supervisors may likewise take into estimation any and all other facts, circumstances and conditions pertinent thereto, to the end and purpose that said rates shall be equal, reasonable and just, both to such persons, companies, associations and corporations and to said inhabitants."

The complainant alleges in its bill that prior to March 12, 1885, at the time of the passage of the act of that date, the company and its incorporators had actually invested under the authority of the act of 1862 a capital amounting to $971,113.13 in money, all of which was actually, reasonably and necessarily expended by the complainant in the purchase and construction of its canals and other property actually used in and useful to the appropriation and furnishing of the water, and that the property was on the last named date and still is of the reasonable worth of $971,113.13. The complainant averred that if the act of 1885 was construed as repealing, altering or amending the provisions of the act of 1862, as to rates to be charged by the company, then that the act of 1885 was in violation of and repugnant to the provisions of article I, section 10, of the Constitution of the United States, and as thus construed the act of 1885 impaired the obligation of the contract between the State of California and the complainant, entered into under the authority of section 3 of the act of 1862.

It was also averred that the rates, as fixed by the board under the act of 1885, would result in taking the property of the complainant without due process of law, and in depriving it of the equal protection of the laws.

An answer was put in taking issue with the complainant on the averments in its bill, and a trial was had in the Circuit Court. That court held (113 Fed. Rep. 930) that there was a contract under the act of 1862, as contended for by the complainant; that the act of 1885 could not be so construed as to permit the board of supervisors, in fixing water rates by

its authority, to entirely disregard the capital actually invested in the property of the corporation under the act of 1862, and that if otherwise construed the act of 1885 would run counter to the constitutional provision that no law impairing the obligation of a contract should be passed, and the statute would be subjected to the further objection that, as so construed, the State would deprive complainant of its property without due process of law, and would also deny to it the equal protection of the laws as provided for in the Federal Constitution, and that such provision could not be held subordinate to the constitutional power conferred upon the State legislature to alter, amend or repeal the general laws concerning corporations. It was also said by the court that it was the duty of the board of supervisors to ascertain the amount of the capital actually invested in the corporation; that is to say, the amount of the capital actually paid in and invested in constructing the canals and acquiring the other property used and made useful in supplying water to the customers of the corporation in Stanislaus County, and this fact should have been considered by the board in fixing the water rates which the complainant was entitled to charge under the statute; that when the board of supervisors fixed the rates no consideration was given by it to the evidence showing the amount of the capital actually put into the corporation, or the actual, reasonable and proper cost of the works; that the evidence establishes the fact that the board failed to perform its duty in this respect, and that by reason thereof it deprived the complainant of its property without due process of law, and denied to it the equal protection of the laws.

The court found that the evidence showed that the rate fixed by the board of supervisors reduced the income of the company considerably below six per cent upon the capital actually invested in the property of the corporation, and if a corresponding reduction were made in Fresno and Merced Counties its income would, under the most favorable conditions, be reduced to less than five per cent per annum on the value of the property as estimated by the board of supervisors.

The court also held that the company had waived the right to fix rates as high as permitted under the act of 1862, by failing to make them as high as therein permitted, prior to the passage of the act of 1885, and the act of 1885, "providing that the net annual receipts as adjusted by the board of supervisors should not be less than six nor more than eighteen per cent per annum, is therefore properly applicable to the regulation of complainant's rates."

Mr. Justice PECKHAM, after making the foregoing statement, delivered the opinion of the Court.

First. The question which first arises in this case is whether there was a contract with the company under the act of 1862, by reason of which the

State could not thereafter authorize the board of supervisors to reduce the rates so low as to yield less than one and one-half per cent per month upon the capital actually invested.

The acts of 1853 and 1862 are general laws, the former providing for the formation of corporations of the character named therein, and the latter amending that act, and especially providing for the incorporation of canal companies and the construction of canals. No special charter was given the company directly from the legislature otherwise than is contained in the powers granted by the two acts above named. A company, although organized under a general statute, may nevertheless thereby enter into and obtain a contract from the State which may be of such a nature that it can only be altered in case power to alter was, prior thereto, provided for in the constitution or legislation of the State.

In *Salt Company* v. *East Saginaw*, (13 Wall. 373,) it was said by Mr. Justice Bradley, in delivering the opinion of the court, page 378, that—

"Corporations formed under general laws in place of special charters, like the Ohio banks under the general banking law of that State, are entitled to the benefit of specific provisions and exemptions contained in those laws, which are regarded in the same light as if inserted in special charters. 'The act is as special to each bank,' says Justice McLean, delivering the opinion of this court, 'as if no other institutions were incorporated under it.' In such cases the scope of the act takes in the whole period for which the corporation is formed. The language means that, during the existence of any corporation formed under the act, the stipulation of exemption specified in it is to operate."

The language used in conferring power to fix rates in the act of 1862 is to be taken as if it were contained in a special charter granted by the legislature to this company. The question then arises whether language such as is contained in the third section of that act, and which is set forth in the foregoing statement of facts, amounts to a contract to be protected by the Constitution of the United States? We think it does not.

It seems to us that language of this nature cannot properly be construed as a promise or pledge that the limitation as to rates may not be altered at any time when in the judgment of the legislature it may be proper so to do. Water rates which might have been perfectly reasonable at the time of the passage of the act of 1862, although amounting to one and one-half per cent per month upon the capital actually invested, might in the course of years become exceedingly burdensome to those who used the water and amount to a very unreasonable compensation to the company for the water it sold. Irrigation by means of corporations formed to supply water was in its infancy in 1862 in California, and the risks necessarily taken in the organization of such companies and the prosecution of their work were then not only very large but also extremely uncertain in character. Consequently, a rate of compensation was proper at

that time which in the course of years and the accumulated experience as to the necessary cost of such works, and of their successful operation including the consideration of the risk attendant upon their operation, would make a water rate, as provided by the act of 1862, a very unreasonable overcharge. These facts must have been present in the minds of those who enacted the legislation of 1862, and it would be most unreasonable to suppose that it was intended by any such legislation to forever thereafter tie the hands of the State in regard to all companies organized under the act of 1862 and before the passage of the act of 1885.

The authority given by the act of 1862 enabled the board of supervisors to conditionally regulate the rates. There is no promise made in the act that the legislature would not itself subsequently alter that authority. The State simply authorized its agents, the boards of supervisors, to regulate rates, but not to reduce them below a certain point. We do not think that from this language a contract can or ought to be implied that the State might not thereafter authorize the boards to reduce them, or that it might not itself do so directly. Even as between individuals, such an implication would not be a reasonable one from the language used, and as the contract, if it existed, would take away from the legislature its otherwise undoubted right of regulation upon a subject of great public importance, there is still less reason for implying a contract which would prevent the State from using its power to that end for the future. The language of this portion of the act applies to the boards and limits their right of reduction, leaving unhampered the right of the State to interfere directly or by authorizing the boards to reduce the rates below the point stated in the act. In order to make such a contract the language must be plain and susceptible of no other reasonable construction. (*Freeport Company* v. *Freeport City*, 180 U. S. 587–599, citing *Railroad Commission Cases*, 116 Id. 307–325.)

In our belief, the language of the act of 1862 does not and was not intended to form a contract, but simply amounted to the statement of the then pleasure of the legislature, to so remain until subsequently altered by it. The cases heretofore decided in this court are authority for this view. Some of them are now referred to.

In *Rector &c. of Christ Church* v. *Philadelphia*, (24 How. 300,) the following language was used in the statute: "The real property, including ground rents, now belonging and payable to Christ Church Hospital, in the city of Philadelphia, so long as the same shall continue to belong to the said hospital, shall be and remain free from taxes." A subsequent law provided that all property belonging to an association or incorporated company which was then by law exempt from taxation should thereafter be subject to taxation in the same manner as other property. The later law was held not to be in violation of the Constitution of the United States. It was held that language such as this was nothing but in the

nature of a privilege, which existed only during the pleasure of and might be revoked by the sovereign power whenever it chose so to do.

Salt Company v. *East Saginaw*, (13 Wall. *supra*,) was a case where the court held that the language used was that conferring a bounty, and that it did not amount to a contract in such a sense that it could not be repealed, although it did grant an exemption from taxation of the property used for the purpose of obtaining salt. In regard to the language exempting the property from taxation the court said:

"The law in question says to all: You shall have a bounty of ten cents per bushel for all salt manufactured, and the property used shall be free from taxes. But it does not say how long this shall continue; nor do the parties who enter upon the business promise how long they will continue the manufacture. It is an arrangement determinable at the will of either of the parties, as much so as the hiring of a laboring man by the day."

In *Tucker* v. *Ferguson*, (22 Wall. 527,) it was also held that an act of the legislature exempting property of a railroad company from taxation was not a contract to exempt it unless there were a consideration for the act; that, without it, the promise was of a gratuity spontaneously made, which might be kept, changed or recalled, at pleasure, and that the rule applies to the agreements of States made without consideration as well as to those of persons.

In *Welch* v. *Cook*, (97 U. S. 541,) the act of the legislative assembly of the District of Columbia of June 26, 1873, exempted from general taxes for ten years thereafter such real and personal property as might be actually employed within the District for manufacturing purposes. It was held that the language did not create an irrepealable contract with the owners of such property, but simply conferred a bounty, liable at any time to be withdrawn.

In *Grand Lodge &c.* v. *New Orleans*, (166 U. S. 143,) the language exempted the property from taxation "so long as it is occupied as a Grand Lodge of the F. and A. Masons;" and it was held that it did not constitute a contract between the State and the plaintiff, but was a mere continuing gratuity, which the legislature was at liberty to terminate and withdraw at any time.

In *Wisconsin & Michigan Railway Company* v. *Power*, decided at this term, (191 U. S. 379,) the language of the act was "That the rate of taxation fixed by this act or any other law of this State shall not apply to any railway company hereafter building and operating a line of railroad within this State north of parallel forty-four of latitude, until the same has been operated for the full period of ten years, unless the gross earnings shall equal four thousand dollars per mile." After the railroad company had been organized, and while that act was in force and on June 4, 1897, the State passed a law levying a specific tax upon the property and business

of every railroad corporation operated within the State. The road in question would have been entitled to the exemption stated in the prior law if it were in force. The railroad contended that it had a contract by virtue of the language above set forth. This court held that no contract arose from the language used, and that consequently the subsequent act providing for taxation did not violate the Federal Constitution in regard to contracts.

Sufficient cases have been cited to show that language quite as strong as that used in the act of 1862 does not amount to a contract. It is true that the cases cited involved questions of alleged contracts for exemption from taxation, in regard to which it has been said that no presumption exists in favor of a contract by a State to exempt lands from taxation, and that every reasonable doubt should be resolved against it. Statutes of California providing that the use of all water appropriated for sale, rental or distribution should be a public use and subject to public regulation and control are valid, (*San Diego &c. Company* v. *National City*, 174 U. S. 739,) and companies formed for the purpose of furnishing water for irrigation purposes have been held in that State to be public municipal corporations, and the use of the water for the purpose mentioned a public use. See cases cited in *Fallbrook Irrigation District* v. *Bradley*, (164 U. S. 112, 159.) To regulate or establish rates for which water will be supplied is in its nature the execution of one of the powers of the State, and the right of the State so to do should not be regarded as parted with any sooner than the right of taxation should be so regarded, and the language of the alleged contract should in both cases be equally plain. (*Owensboro* v. *Owensboro Waterworks Company*, 191 U. S. 358.)

In our judgment the language of the act of 1862 did not amount to a contract that the rates for the use of water should never be lowered below the amount provided for in that act.

Second. But assuming there was a contract, we think the rates could be changed under that provision of the constitution of the State adopted in 1849, article 4, section 31, which provided:

"Corporations may be formed under general laws, but shall not be created by special act except for municipal purposes. All general laws and special acts passed pursuant to this section may be altered from time to time or repealed."

This court has had frequent occasion to discuss the meaning and extent of the power thus reserved, as it exists in about all the States, either by constitutional or statutory provisions.

Tomlinson v. *Jessup*, (15 Wall. 454,) held that the object of reserving a power to amend or repeal (p. 458) was—

"To prevent a grant of corporate rights and privileges in a form which will preclude legislative interference with their exercise if the public interest should at any time require such interference. It is a provision in-

tended to preserve to the State control over its contract with the corporators, which without that provision would be irrepealable and protected from any measures affecting its obligation."

It was also said (p. 459):

"The reservation affects the entire relation between the State and the corporation, and places under legislative control all rights, privileges and immunities derived by its charter directly from the State."

In *Shields* v. *Ohio*, (95 U. S. 319,) it was stated that by virtue of the power to alter, revoke or repeal an act, as provided in the constitution of Ohio, section 2, article 1, the legislature did not impair the obligation of a contract in prescribing rates for passenger transportation by a new consolidated company, although one of the original companies prior to the adoption of the constitution was organized under a charter which imposed no limitation as to rates.

In *Close* v. *Glenwood Cemetery*, (107 U. S. 406,) it was again held that a power reserved in the legislature to alter, amend or repeal a charter authorizes it to make any alteration or amendment of the charter granted, subject to it, which will not defeat or substantially impair the object of the grant, or any rights vested under it, and which the legislature may deem necessary to secure either that object or any public right.

The same principle was decided in *Sinking Fund Cases*, (99 U. S. 700, 720;) *New York &c. Railroad* v. *Bristol*, (151 Id. 556,) and *United States* v. *Union Pacific Railway*, (160 Id. 1, 33.)

Covington v. *Kentucky*, (173 U. S. 231,) decided that language describing certain property, and providing that it should be and remain forever exempt from State, county and city tax, did not prevent the legislature from withdrawing such exemption and subjecting the property to taxation, in view of the statute that all charters and grants of the corporations should be subject to amendment or repeal at will of the legislature. Mr. Justice Harlan, in delivering the opinion of the court, said (p. 238):

"We are of opinion that the exemption from taxation embodied in that act did not tie the hands of the Commonwealth of Kentucky so that it could not, by legislation, withdraw such exemption and subject the property in question to taxation. The act of 1886 was passed subject to the provision in a general statute of Kentucky, above referred to, that all statutes 'shall be subject to amendment or repeal at the will of the legislature, unless a contrary intent be therein plainly expressed.' If that act in any sense constituted a contract between the city and the Commonwealth, the reservation in an existing general statute of the right to amend or repeal it was itself a part of that contract."

To the same effect is *Knoxville Water Company* v. *Knoxville*, (189 U. S. 434.)

These cases also hold that there is a limitation, even to the power of amendment when reserved in the constitution or a statute of a State. Some

of the cases, although holding that the power to amend or repeal was properly exercised in them, also state that the power is not without limit; that the alterations must be reasonably made, in good faith and consistent with the scope and object of the act of incorporation, and that sheer oppression and wrong could not be inflicted under the guise of amendment or alteration; that beyond the sphere of the reserved powers the vested rights of property in corporations in such cases is surrounded by the same sanction and are as inviolable as in other cases. In reiterating this view of the power, we think that a mere reduction of rates, while still leaving reasonable, fair or just compensation for the use of the property, is not prohibited, and we are quite clear that, even assuming there was a contract, the legislature nevertheless had the power to so alter and amend the act of 1862 as to provide for the fixing of rates as set forth in the act of 1885.

It is not confiscation nor a taking of property without due process of law, nor a denial of the equal protection of the laws, to fix water rates so as to give an income of six per cent upon the then value of the property actually used, for the purpose of supplying water as provided by law, even though the company had prior thereto been allowed to fix rates that would secure to it one and a half per cent a month income upon the capital actually invested in the undertaking. If not hampered by an unalterable contract, providing that a certain compensation should always be received, we think that a law which reduces the compensation theretofore allowed to six per cent upon the present value of the property used for the public is not unconstitutional. There is nothing in the nature of confiscation about it.

The original cost may have been too great; mistakes of construction, even though honest, may have been made, which necessarily enhanced the cost; more property may have been acquired than necessary or needful for the purpose intended. Other circumstances might exist which would show the original rates much too large for fair or reasonable compensation at the present time. Notwithstanding such facts, are the shareholders in the company to be forever entitled to eighteen per cent upon this cost, and does a reduction in amount, as provided for in the act of 1885, take away property in violation of the provisions of the Federal Constitution? We think not.

In this case much of the total amount expended in the course of the construction of the works was not proved by those who made such expenditures, and the items and total amount of the cost of construction were only proved by the books. What such books did not prove was the reasonableness of that cost, its propriety or necessity. There were statements that appeared in the minutes of the meetings of the shareholders which were put in evidence, that showed at least a dispute as to the proper cost of the works, and at one of these meetings a shareholder said there had

been a waste in the management of the affairs of the company amounting to $350,000, which was caused by the chief engineer who had been in charge of the canal, and that his mistakes had cost the company a good deal of money. There would seem to have been more of a dispute as to who was responsible for this loss than over the fact of loss. At another meeting held in December, 1881, the president had said in his remarks to the meeting that, in his opinion, with careful management the canal would pay a fair revenue on what it ought to have cost. Although these minutes did not conclusively prove the fact of the excessive cost of the work, yet where the books of the company were substantially the only evidence of the amount expended and there was no other satisfactory evidence of the reasonableness of the expenditures, it would not be surprising if the board should have regarded the statements in the minutes relating to excessive cost as a justification, if not a requirement, for the reduction of the cost of construction, upon which rates might be fixed, by at least the amount mentioned, $350,000.

Other considerations, in the shape of facts, circumstances and conditions pertinent to the alleged cost of the work and appearing in the course of the inquiry, may have been considered by the supervisors and the conclusion arrived at, after a consideration of all the material facts, that the rates fixed would result in justice to both the company and the consumers, as called for by the act.

Judging by this record, we are unable to say the board of supervisors failed to provide just and fair compensation for the use of the property by the public.

In *San Diego Land Company* v. *National City*, (174 U. S. 739,) it was held, (following *Smyth* v. *Ames*, 169 Id. 466, 543, 544,) that what the company was entitled to demand in order that it might have just compensation was a fair return upon the reasonable value of the property at the time it was being used for the public. The appellants in that case contended that in fixing what were just rates the court should take into consideration the cost of the plant and of its annual operation, the depreciation of the plant, and a fair profit to the company above its charges for its services. It was observed by the court that undoubtedly all these matters ought to be taken into consideration and such weight be given them, when rates are being fixed, as under all the circumstances would be just to the company and to the public. The same principle is reaffirmed in *San Diego Land Company* v. *Jasper*, (189 U. S. 439, 442.)

After taking such facts into consideration, the company might still be directed to receive rates that would be nothing more than a fair and just compensation or return upon the reasonable value of the property at the time it was being used for the supplying of the water to the public.

To take the amount actually invested into "estimation" does not mean necessarily that such amount is to control the decision of the question of rates. Other language would have been employed to express that thought. The cost may be estimated, says the act, but that leaves open a reference to the other facts adverted to in the latter part of section 5, and it is upon a consideration of the whole case that the board is to determine what shall be reasonable, just and equal to all parties. The record would seem to show that the board did take these various matters into consideration in coming to the conclusion it did in regard to the value of the property, although giving much less weight to such alleged cost than the company thought was proper. The board added over $25,000 to the amount proved as the present cost of the construction of the canals, based on the prices of material, supplies and labor, of the date when the estimate was made, that estimate being $312,000, while the board fixed the valuation at $337,000.

Much of the capital was invested between twenty and thirty years ago, and to be able still to realize six per cent upon the money originally invested is more than most people are able to accomplish in any ordinary investment, and more than is necessary in order to give just compensation for property at the time it is used for the public purpose originally intended.

It is, of course, impossible to say what rates may be adopted in the other counties through which this canal runs, and that is one of the embarrassments under which the parties suffer from the language of the statute of 1885. Heretofore the company has fixed its own rates therein. Exactly how the question may be hereafter determined as to the percentage of income, where there are three different boards of supervisors who may fix rates for their respective counties, each differing from the other, is not made clear by the statute. The complainant admits that the rates provided for by the supervisors under the act of 1885, if applied to all three counties, would allow complainant an income of substantially six per cent on $337,000, being $25,000 more than the present cost of the work would be, as shown by uncontradicted and satisfactory evidence. Those rates exist in the other counties at present.

Hereafter, in case the other counties should fix rates in such manner that, taken as a whole, the rates in the three counties would not insure an income of at least six per cent, as provided for in the act of 1885, the company would of course not be bound to accept such rates, and a decree in this case would not bind it in regard to the propriety of rates for the future, as fixed by the ordinance of 1896 for the county of Stanislaus.

The judgment of the Circuit Court must be reversed and the bill dismissed without prejudice.

So ordered.